DELHI
SALES TAX CASES

Containing important decisions of the Supreme Court of India, High Courts, Sales Tax Appellate Tribunal, Other Appellate and Revisional Authorities, Notifications, Circulars, Articles, etc.

Editors-in-Chief
S.K. KHURANA
KUMAR JEE BHAT
H.L. MADAN

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Neetika Khanna, Advocate
B-121, 2nd Floor,
Mansarover Garden,
New Delhi
+91 9958810696

Respected seniors and dear friends,

Happy Teachers Day.

You are all now well aware that the Sales Tax Bar Association (Regd) has started publishing their prestigious journal Delhi Sales Tax Cases as an e-journal, I was keen to learn the nitty gritty of e-books and particularly conversion from ordinary printed material to e-books.

I discussed my interest with the Editorial Board of the journal and was given a go ahead to convert the previous hard bound printed journals as e-books. I am thankful to the Office Bearers of Sales Tax Bar Association (Regd.) for having confidence in me for the task.

Use of e-journals has been explained in the previous volumes for the information of subscribers who may not be conversant with the use of e-journals. I reiterate the same for the benefit of the members.

When one is trying to find a judgement, article, notification from the respective index of the journal, the required item is to be clicked in the index and immediately required page opens. If a reader is trying to locate a judgement in General Index and from the index he selects a judgement to read, the reader is required to click the judgement in General Index and the said judgement opens.

At times without any particular judgement or specific article or notification or subject in mind, a reader just has a word or expression, a reader has to press “Ctrl + F” keys on the keyboard and wherever such word or expression appears in the volume, it starts appearing on the screen one by one.

I hope that the use of e-journal is clarified satisfactorily. If still any question or query remains, all the subscribers should feel free to contact the undersigned.

I once again express my sincere thanks to the Sales Tax Bar Association (Regd.) and Editorial Board of the DSTC for having given me this opportunity to serve the profession. On this teachers day, 2020 I record my gratitude to all my teachers, seniors, mentors and guides for their invaluable guidance.

Neetika Khanna
Advocate

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[2017] 55 DSTC 1 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mr. Justice Chander Shekhar]

W.P(C) 3502/2017

I Smart Mobile Technology Private Limited. ... Petitioner

Versus

Commissioner of VAT & Anr. ... Respondent

Date of Order: 25 April, 2017

REFUND – SECTIONS 9 (2) (G) AND 38 OF DVAT ACT, 2004 – REFUND APPLICATION PENDING WITH REVENUE SINCE 20.01.2015 – ON 11.04.2017 INSTEAD OF ISSUING REFUND VATO ISSUED A NOTICE OF DEFAULT OF ASSESSMENT OF TAX AND INTEREST UNDER SECTION 32 OF DVAT ACT, 2004 - ON THE GROUND THAT THE DEALER HAD CLAIMED AN INPUT TAX CREDIT OF RS.20,60,500 AND ON AN ANALYSIS, IT IS REVEALED THAT THE SAID AMOUNT IN RESPECT OF M/S ARJ EXIM INDIA FOR RS.18,69,664/- COULD NOT BE VERIFIED AND, THEREFORE, THE SAID AMOUNT WAS DISALLOWED 'AS PER SECTION 9(2)(G) OF THE DVAT ACT'. A DEMAND FOR THE SAID AMOUNT WAS ACCORDINGLY CREATED. NO OPPORTUNITY WAS PROVIDED TO THE PETITIONER TO OFFER AN EXPLANATION.

Held

Section 9 (2) (g) envisages a situation where a selling dealer fails to deposit the tax that has been collected or fails to lawfully adjust it against the output tax liability. Therefore, the mere fact that what may have been deposited does not match what has been collected will not automatically mean that Section 9(2)(g) of the DVAT Act is attracted. In any event, this cannot be done without notice to the Petitioner and without affording an opportunity of providing an explanation. In any event it ought not to have been resorted to at a stage when the refund was long overdue. The entire exercise is fraught with illegality and is an abuse of the process of the law by the VATO. The Court, accordingly, sets aside the default assessment order dated 11th April, 2017. There being no other compliance pointed out by the VATO, there can be no justification for delaying the issue of refund to the Petitioner any longer. It is accordingly ordered that not later than two weeks from today, the VATO will ensure that the amount of refund, together with interest payable thereon, is paid directly into the account of the Petitioner. If there is non-compliance with this direction, it will be open to the Petitioner to seek appropriate legal remedies in accordance with law.

Present for the Petitioner : Mr. Vasdev Lalwani, Mr. Rohit Gautam, Mr. Rahul Gupta, Advocates

Present for the Respondent : Mr. Avtar Singh & Mr. Vijender Singh, Advocates

Cased Referred to

1. *M/s. Swarn Darshan Impex v. Commissioner of Trade & Taxes (2010) 31 VST 475 (Del)*
2. *M/s Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347 (Del)*

Order

1. Issue notice. Mr. Avtar Singh, Advocate accepts notice on behalf of the Respondents.

2. The Petitioner's refund application has been pending with the Respondents/ Delhi Value Added Tax Department since 20th January, 2015. The refund amount is Rs. 18,21,440/-. After sitting on the application for over two years, on 11th April, 2017, the Value Added Tax Officer ("VATO"), Ward 44, issued a notice of default of assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 ("DVAT Act"). A copy of the said default assessment notice/order has been enclosed as Annexure P-3. Therein, it is observed that in its return, the dealer had claimed an input tax credit of Rs.20,60,500 and on an analysis, it is revealed that the said amount in respect of M/s.ARJ Exim India for Rs.18,69,664/- could not be verified and, therefore, the said amount was disallowed 'as per Section 9(2)(g) of the DVAT Act.' A demand for the said amount was accordingly created.

3. This Court has repeatedly held in several decisions that at the stage of processing the claim for refund, the DVAT Department cannot re-open assessments normally be levied as duty for a period far beyond what is permissible under Section 38 of the DVAT Act. Illustratively, a reference may be made to the decisions in *M/s. Swarn Darshan Impex v. Commissioner of Trade & Taxes (2010) 31 VST 475 (Del)* and *M/s Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347 (Del).* Despite Circular No. 6/2005 dated 15th June 2005 and the Instruction dated 21st July 2016 issued by the Commissioner, DVAT requiring speedy disposal of refund claims, the Court finds that the VATOs are repeatedly seeking to create fresh demands, instead of processing and making the refunds in accordance with law.

4. Particularly, with reference to Section 9(2)(g) of the DVAT Act, it requires to be noticed that it envisages a situation where a selling dealer fails to deposit the tax that has been collected or fails to lawfully adjust

it against the output tax liability. Therefore, the mere fact that what may have been deposited does not match what has been collected will not automatically mean that Section 9(2)(g) of the DVAT Act is attracted. In any event, this cannot be done without notice to the Petitioner and without affording an opportunity of providing an explanation. In any event it ought not to have been resorted to at a stage when the refund was long overdue. The entire exercise is fraught with illegality and is an abuse of the process of the law by the VATO. The Court, accordingly, sets aside the default assessment order dated 11th April, 2017.

5. There being no other compliance pointed out by the VATO, there can be no justification for delaying the issue of refund to the Petitioner any longer. It is accordingly ordered that not later than two weeks from today, the VATO will ensure that the amount of refund, together with interest payable thereon, is paid directly into the account of the Petitioner. If there is noncompliance with this direction, it will be open to the Petitioner to seek appropriate legal remedies in accordance with law.

6. Before concluding, the Court would like to reiterate the following observations in *Prime Papers & Packers v. Commissioner of VAT (supra)*,:

> "18. The Court is constrained to observe that there have been a large number of petitions filed in this Court by dealers awaiting the processing of their refund claims. Despite numerous judgments of this Court and circulars issued by the Commissioner VAT, including Circular No. 6 of 2005 and recently the Order dated 21st July 2016, the problem of delayed refunds persists. The frequent transfers of VATOs and the lack of any orientation and training as regards their statutory responsibilities cannot constitute a valid justification for delaying the refunds due to the dealers. The Court would urge the Commissioner VAT to review the issue of grant of refunds on priority basis so that the process is streamlined and his instructions regarding speedy disposal of refunds is strictly followed. He must initiate disciplinary action against those officers of the DT&T who are found disobeying the instructions issued by the Commissioner from time to time in this regard. The Commissioner should undertake a periodic review, at least once in two weeks, as to how many refund applications have been processed and within what time. Responsibility should be fixed on derelict officers and disciplinary proceedings initiated where there is a clear breach of the statutory duties. The collective failure of such officers is imposing a huge interest burden on the exchequer which is clearly avoidable."

7. The petition is disposed of in the above terms.

[2017] 55 DSTC 4 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhatt & Hon'ble Mr. Justice Najmi Waziri]

VAT Appeal No. 30/2016 &
CM Application 46310 – 46312/2016

Date of Order: 7 February, 2017

The Commissioner, Department of Trade & Taxes ... Petitioner
Govt. of NCT of Delhi

Versus

M/s S. K. Steel Traders ... Respondent

QUESTION OF LAW – SECTION 9 (1), 9 (2) & 9 (2) (G) OF DELHI VAT ACT, 2004 – DISALLOWANCE OF ITC BY VATO – ORDER CONFIRMED BY OHA – TRIBUNAL FOLLOWING THE JUDGEMENT OF SHANTI KIRAN INDIA LTD. 2013 (57) VST 405 (DEL) ANALYSED THE PROVISION OF SECTION 9 (2) (G) INTRODUCED W.E.F 01.04.2010 ALLOWED ITC CLAIMED – REVENUE FILED APPEAL AGAINST TRIBUNAL ORDER IN THE HIGH COURT OF DELHI – REVENUE APPEAL WAS DISMISSED.

Facts of the case

Revenue filed an appeal in the high court of Delhi against the order of DVAT Tribunal urging that Tribunal's impugned order raises a substantial question of law as to the correct interpretation of section 9 (2) (g) of the DVAT Act. The assessee a registered dealer claimed input tax credit of Rs. 6, 31,264/- on purchases made against tax invoices but the claim was disallowed by VATO on the ground that firm's registration (selling dealer) was cancelled. The objection was unsuccessful.

Matter carried to DVAT Tribunal the Tribunal allowed the appeal on the ground that there is no methodology by which the purchasing dealer can monitor the selling dealers behaviour vis –a –vis latter's VAT return by following decision of Hon'ble Delhi High Court in case of Shanti Kiran Industries Pvt. Ltd. vs. Commissioner Trade and Taxes Department [(2013) 57 VST 405 (Del.)].

Held

The Court does not see any provision or methodology by which the purchasing dealer can monitor the selling dealer's behaviour vis-à-vis

the letter's VAT returns. Indeed, section 28 stipulates confidentiality in such matters. Nor is this court in agreement with the Tribunal's opinion that insertion of clause (g) of section 9 (2) is clarificatory. The court is further of the opinion that Bombay High Court judgement in Mahalaxmi Cotton Ginning is of no assistance to the revenue because there, the court had to deal with Constitutionality of section 48 (5) of local VAT law. In the present case, the VAT Act is silent. Section 9 (2) (g) was introduced w.e.f. 01.04.2010. Therefore, the Bombay High Court decision is not of any assistance to the revenue. The appeal is accordingly, dismissed along with the pending application.

Present for the Petitioner	:	Sh. Satyakam, ASC with Sh. Inder Prakash, AVATO
Present for the Respondent	:	NONE

Cased Referred to

1. *Mahalaxmi Cotton & Ginning Pressing and Oil India 2012 (51) VST 1 (Bom.)*
2. *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade and Tax Department 2013 (57) VST 405 (Del).*

Order

1. This appeal under Section 81 of the Delhi VAT Act, 2004 [hereafter "the Act"] challenges an order of the VAT Tribunal [hereafter "the Tribunal"] which allowed the assessee's appeal for the assessment periods 2007-08. The appellant/Revenue urges that the Tribunal's impugned order raises a substantial question of law as to the correct interpretation of Section 9(2)(g) of the Act.

2. The assessee is a registered dealer which had claimed input tax credit of `6,31,264/- on purchases made against tax invoices issued by two selling dealers, i.e. M/s. Riya Enterprises and M/s. Salasar Traders. The claims were disallowed by the VATO with the rationale that the firm's registrations had been cancelled and default assessment of tax and interest under Section 32 of the Act were completed. The assessee was unsuccessful before the appellate authority, i.e. the Objection Hearing Authority (OHA) and therefore, approached the VAT Tribunal.

3. The Tribunal analysed the provision, i.e. Section 9(2), following the decision of this Court in *Shanti Kiran India Pvt. Ltd. v. Commissioner Trade and Tax Department 2013 (57) VST 405 (Del)*. The Tribunal held as follows:

"9. It is clear from reading of above- provisions that Tax Credit can be denied if it is not claimed in accordance with section 9(1) of the DVAT Act. Purchasing dealer cannot be denied benefit on the ground that selling dealer's, certain transactions with other parties were found doubtful unless purchasing dealer was found in collusion with these dealers.

10. Hon'ble Delhi High Court's following observations in the case of M/s Shanti Kiran India Pvt. Ltd. versus Commissioner, Trade & Tax are worth mentioning, which are as under:

> *"In the present case, section 9(1) grants input credit to purchasing dealers. Section 9 (2), on the other hand, lists out specific situations where the benefit is denied The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation placed by the Tribunal that there is statutory authority for granting input credit, only to the extent tax is deposited by the selling dealer, is unsound and contrary to the statute. It is also iniquitous because an onerous burden is placed on the purchasing dealer - in the absence of clear words to that effect in the statute - to keep a vigil over the amounts deposited by the selling dealer. The Court does not see any provision or methodology by which the purchasing dealer can monitor the selling dealer's behaviors vis-a-vis the letter's VAT returns. Indeed, section 28 stipulates confidentiality in such matters."*

11. Coming to the facts of the case, the Ld Assessing Authority rejected the ITC on the sole ground that Registration Certificate of the selling dealers has been cancelled. Ld OHA while upholding the orders of the Ld VATO inter alia observed that "The VATO has submitted that the department has lodged an FIR against M/s Riya Enterprises and 15 other firm bearing FIR No. 249/09 dated 29.11.2009 u/s 420/468/471/1208 IPC PS EOW New Delhi and investigation is under process. The VATO also forwarded a letter of office of Assistant Commissioner of Police, CST, EOW, Crime Branch No. 4562/R/ACP/CBT/EOW/Crime branch dated New De/ hi the 12.11.2010 about investigation in FIR No. 249/09 dated 29.11.2009 u/s 420/468/471/1208 IPC PS EOW, New Delhi. The material placed on file indicates that the business transactions in the instant case are not normal business affairs of one of the selling dealers. In the circumstances the objections cannot be considered, hence rejected."

4. This Court notices that besides the fact that the Tribunal followed the judgment in Shanti Kiran (supra), in that case the Court had also held that Section 9(1) which grants input credit to purchasing dealers to an extent is controlled by Section 9(2) that lists specific situations where benefit can be denied. The Court also considered the proviso to Section 9(2) and thereafter held as follows:

> *The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation placed by the Tribunal that there is statutory authority for granting input credit, only to the extent tax is deposited by the selling dealer, is unsound and contrary to the statute. It is also iniquitous because an onerous burden is placed on the purchasing dealer – in the absence of clear words to that effect in the statute- to keep a vigil over the amounts deposited by the selling dealer. The Court does not see any provision or methodology by which the purchasing dealer can monitor the selling dealer's behavior, vis-à-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to Section 9(2) is clarificatory. As observed earlier, Section 9(2) is an exception to the general rule granting input tax credit to dealers who qualify for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such as the one spelt out in clause (g) and its addition in 2010 rules out legislative intention of its being a mere clarification of the law which always existed. This Court is further of the opinion that the Bombay High Court judgment in M/s. Mahalaxmi Cotton Ginning is of no assistance to the revenue, because there, the Court had to deal with the Constitutionality of Section 48(5) of the local VAT law. The Court applied the well-established principle of greater deference to policy makers and legislatures in economic and fiscal matters, and upheld the statute, which had said that set off (a provision similar to input credit under Section 9(1) of the Delhi VAT Act) would be permissible only to the extent of the amounts actually paid. The High Court held that: "The words "actually paid" into the government treasury signify that a claim for set off cannot be in excess of the tax in respect of which the set off is claimed that has been deposited into the treasury. The plain and natural meaning of the expression "actually paid" into the treasury is that the tax on purchases of which a set off is claimed must actually and physically have been deposited into the treasury. A constructive or notional deposit would not fulfill the mandate of the provision. The State Legislature has used language of a mandatory*

nature that leaves its intent beyond any doubt. The exception which is carved out in the substantive part of sub-section (5) is where a claimant dealer is liable to pay purchase tax on the purchase of the said goods effected by him. The proviso creates an exception where tax is deferred or deferrable under any Package Scheme of Incentives implemented by the State Government. In that event a deeming fiction is created by the proviso under which the tax is deemed to have been received in the Government treasury for the purposes of the subsection. In all other cases, an actual deposit of taxes is mandated before a set off is allowed." In the present case, as noticed previously, the VAT Act is silent; Section 9(2) (g) was introduced only with effect from 1-4-2010. Therefore, the Bombay High Court decision is not of any assistance to the revenue.

5. In view of the above enunciation of law, which was followed by the Tribunal, the question of law sought to be urged does not arise, as it stands settled by the Division Bench in Shanti Kiran (supra). The appeal is accordingly dismissed along with the pending applications.

[2017] 55 DSTC 8 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mr. Justice Najmi Waziri]

W.P.(C) 1223/2017

Rexcin Pharmaceuticals Private Limited. ... Petitioner

Versus

Commissioner, Value Added Tax & Anr. ... Respondent

W.P (C) 2433/2017

Jenus Traders India ... Petitioner

Versus

The Commissioner of Trade and Taxes & Anr. ... Respondent

W.P (C) 2633/2017, CM Application: 11446/2017

Indian Oil Corporation Limited ... Petitioner

Versus

Commissioner, VAT, Delhi & Ors. ... Respondent

W.P (C) 6064/2016

Aero Club ... Petitioner

Versus

Commissioner of Trade and Taxes, Delhi & Anr. ... Respondent

W.P (C) 9656/2016, CM Application: 38645/2016

Pratham MFG. Works ... Petitioner

Versus

Comm. Trade & Taxes, Delhi & his subordinates ... Respondent

W.P (C) 11150/2016, CM Application: 43586/2016

Panaces Biotec Ltd. ... Petitioner

Versus

Commissioner of Trade and Taxes, Delhi & Anr. ... Respondent

And

W.P (C) 11790/2016

Gobind Ram Surendra Kumar ... Petitioner

Versus

Commissioner of Trade and Taxes, Delhi & Anr. ... Respondent

Date of Order : 11 April, 2017

ISSUE OF C & F FORMS UNDER CENTRAL SALES TAX ACT, 1956 – INSPITE OF COURT DIRECTION FORMS NOT ISSUED TO PETITIONERS ON THE GROUND THAT DEPARTMENT HAS FILED SPECIAL LEAVE TO APPEAL AGAINST THE SAID DECISION IN THE SUPREME COURT – JUDGES OF DELHI HIGH COURT SEEN THE SUPREME COURT ORDER – BY THE SAID ORDER LEAVE HAS BEEN GRANTED AND MATTER FIXED FOR HEARING IN JULY, 2017 – THERE IS NO STAY GRANTED OF THE DECISION OF HIGH COURT ORDER.

BINDING OF DIRECTIONS – UNDER THESE FACTS THE DEPARTMENT IS BOUND TO COMPLY WITH THE BINDING DIRECTIONS ISSUED BY THE COURT IN INGRAM MICRO INDIA PVT. LTD.

Held

These writ Petitions are accordingly disposed of in terms of the decision of this Court in Ingram Micro India Pvt. Ltd. (supra) by directing that the DVAT Department will issue to each of the Petitioners, depending on their specific prayer, the requisite 'C' form or 'F' form or both as the case may be. In the event the DVAT Department desires that an Indemnity Bond should be furnished, it will communicate such requirement to the Petitioner concerned not later than two weeks from today and proceed issue the said C or F forms not later than three weeks from today.

Present for the Petitioner : Ms. Assem Mehrotra, Mr. D. M. Sinha, Sh. Ashok. K. Bhardwaj, Sh. A. P. Vinod Sh. Manish Kumar Hirani, S. Rajesh Mahna Sh. Rajeev Dedira and Sh. Santram Bhati, Advocates

Present for the Respondent : Mr. Gautam Narayan, ASC (Civil),
Mr. R. A. Iyer, Mr. Rahul Sharma,
Sh. Satyakam, ASC, Sh. Naveen Jakhar
for GNCTD, Sh. Akshay Allag,
LA, GNCTD, Mr. P. Roychaudhari,
Sh. Siddhartha Shankar Ray, Advocates.

Cased Referred to

1. Ingram Micro India Pvt. Ltd. v. Commissioner, Department of Trade & Taxes (2016)89 VST 312 (Del).

Order

1. The issue in all these petitions is the failure by the Respondent DVAT Department to issue "C" form or "F" form or both. It is accepted the counsel on both sides that the issue stands answered in favour of the Petitioners and against the Department by the decision of this Court in *Ingram Micro India Pvt. Ltd. v. Commissioner, Department of Trade & Taxes (2016)89 VST 312 (Del)*.

2. The only explanation offered by the DVAT Department for not yet complying with the said decision in these cases that the DVAT Department has filed Special Leave to Appeal (C) No. 295 of 2017 against the said decision in the Supreme Court.

3. The Court has seen the order dated 27th March, 2017 passed by the Supreme Court in the above SLP. While by the said order leave has been granted and the matter has been fixed for final hearing in the month of July 2017, there is no stay granted of the decision of this Court.

4. Therefore, the DVAT Department is bound to comply with the binding directions issued by the Court in *Ingram Micro India Pvt. Ltd. (supra)*.

5. These writ Petitions are accordingly disposed of in terms of the decision of this Court in *Ingram Micro India Pvt. Ltd. (supra)* by directing that the DVAT Department will issue to each of the Petitioners, depending on their specific prayer, the requisite 'C' form or 'F' form or both as the case may be. In the event the DVAT Department desires that an Indemnity Bond W.P.(C) 1223/2017 & Connected Matters should be furnished, it will communicate such requirement to the Petitioner concerned not later than two weeks from today and proceed issue the said C or F forms not later than three weeks from today.

[2017] 55 DSTC 11 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhat & Hon'ble Mr. Justice Najmi Waziri]

WP(C) No. 2882/2013 & CM Application 5417/ 2013, 24904/2016

The Delhi Transporters Associations and Anr. ... Petitioner

Versus

Commissioner of Trade and Taxes ... Respondent

Date of Order: 22 March, 2017

DETENTION OF GOODS VEHICLES – FORM DS 2 – SECTION 61 OF DVAT ACT – RULE 22, 23, 43, 48 & 65 – IN THE ABSENCE OF ANY STATUTORY BASIS AND PUBLICATION OF RELEVANT FORMS (DS 2), GOODS VEHICLES CANNOT BE SUBJECTED TO DETENTION, PENALTY OR ANY COERCIVE ACTION.

OBLIGATION TO CARRY DS 2 – BOTH SECTION 61 AND RULE 43 CLEARLY SPEAK OF STATUTORY FORMS I.E. DVAT 34 & 35/35A; HOWEVER, THE REVENUE NOW SPEAKS OF DS-2 AS THE RELEVANT FORM IN EXISTENCE. WITHOUT AN AMENDMENT OF THE RULES OR PUBLICATION THEREOF OR WITHOUT APPROPRIATE PUBLICATION OF THE FORMS, THE EXECUTIVE AUTHORITY CANNOT INSIST THAT CARRIERS ARE UNDER ANY OBLIGATION TO CARRY SUCH UNPUBLISHED FORMS. ANY ACTION TAKEN TOWARDS DETENTION OR INITIATION OF PENALTY, CONSEQUENT TO THE ALLEGED NON ADHERENCE TO SUCH CONDITION IS BOUND TO FAIL.

Held

In view of the above discussion, the petitioner is clearly entitled to relief. It is held that till the relevant forms are published in accordance with law and the amended rules are brought into force again by operation of law, the transporters especially the goods carriers cannot be compelled to carry such documents with them under pain or coercive action such as detention and penalty.

Present for the Petitioner	:	Ms. Vertika Sharma with Mr. Ravi Chandhok, Advocates
Present for the Respondent	:	Mr. Naushad Ahmed Khan, ASC (Civil) Mr. Vikas Kr. Gupta, Advocate for Trade & Taxes, Deptt., Mr. Nikhil Goel, Proxy for Mr. L. R. Garg, Advocate

Cased Referred to

1. Ramesh Chandra v. Commissioner of Sales Tax, Delhi (C.A.Nos.7306-09/2001)

Order

S. Ravindra Bhat, J. (Oral)

1. The petitioner - a transporter association is aggrieved and seeks several reliefs - all primarily based upon the complaint that in the absence of any statutory basis and the publication of relevant forms, the goods vehicles plied by its members cannot be subjected to detention, penalty or any coercive action.

2. The petitioner is an integrated society which espouses the cause of goods vehicles owners and such like transporters. Interstate transport, the petitioner contends, is regulated by the provisions of The Carriage by Road Act, 2007 which outlines the responsibilities of individual owners, the kind of documents which are to be kept on board each vehicle etc. It submits that wherever goods are transported, the said authority's responsibility of requiring declarations have to be reasonable in the absence of which the obligations can result in onerous and harsh - even unlikely practical consequences. It is stated that the issue of detention of goods vehicles was gone into by the Supreme Court in Ramesh Chandra v. Commissioner of Sales Tax, Delhi (C.A.Nos.7306-09/2001, disposed of by an order dated 19.10.2001). The Court had noted that the then existing law, the Delhi Sales Tax Act, by Section 64 had cast obligations upon the goods vehicles to keep certain classes of documents, and further noted that the relief forms had not been framed or published. The Court directed as follows: -

> *"The Appeals above-mentioned being called on for hearing before this Court on the 19th day of October, 2001. Upon perusing the record and hearing counsel for the appearing parties above-mentioned, THIS COURT DOTH PASS the following ORDER: -*
>
> > *"These appeals have been filed making allegations that the forms prescribed under Section 64 of the Delhi Sales Tax Act, which are meant to be carried by the truck-owners, have not been printed nor made available by the prescribed authority and therefore the vehicle without the said form could not have been detained. Though sufficient opportunity had been given to the Delhi Commissioner of*

Sales Tax and others in Delhi State and an affidavit has been filed, but, in that affidavit this assertion had not been denied.

In that view of the matter, we assume that the assertion made in the petitions are true. Since the relevant forms are not available and have not been printed, the vehicles in question cannot have the obligation of carrying those forms with the vehicle not the vehicle could be detained for not carrying the forms in question. These appeals are accordingly allowed. We make it clear that this direction of ours will remain operative so long as the Forms in question are not printed or made available. The Government may take steps for printing the forms and making them available."

3. It is contended that till date no valid form has been published in accordance with law.

4. The petitioner relies upon form nos.34 and 35, copies whereof have been annexed to this proceeding and contends that these have never been published. It was submitted that these forms were later replaced by others, namely, T-1 and T-2 which too were again replaced by Form Nos.DS-1 and DS-2. However, the DS-1 was later withdrawn leaving only DS-2.

5. Learned counsel for the respondents submits that the petitioner's grievance is unfounded and that the forms prescribed, i.e., DS-2 is to be kept with every transporter to check mis-declarations or abuse. Section-61 of the DVAT Act which is relevant for the purposes of this proceedings reads as follows: -

61. Power to stop, search and detain goods vehicles (Rules 22 (3), 23 (3), 43, 48 & 65)

(1) To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the [owner,] driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary so long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the goods carried, which are in the possession of such [owner,] driver or person in charge.

[(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the

goods carried in the goods vehicle and produce the same before any officer-in-charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.]

[(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

PROVIDED that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half time the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.]

(3) The [owner,] driver or person in charge of the goods vehicle shall, if required, inform the Commissioner of –

- *(a) his name and address;*
- *(b) the name and address of the owner of the vehicle;*
- *(c) the name and address of the consignor of the goods;*
- *(d) the name and address of the consignee of the goods; and*
- *(e) the name and address of the transporter.*

(4) If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner [or driver] or person in charge of such goods vehicle is not carrying the documents as required by sub-section (2) of this section or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this Act, he may, for reasons to be recorded in writing, do any one or more of the following, namely:-

- *(a) refuse to allow the goods or the goods vehicle to enter [or leave] Delhi;*

(b) seize the goods and any documents relating to the goods; and

(c) seize the goods vehicle and any documents relating to the goods vehicle.

(5) Where the owner [driver] or the person in charge of the goods vehicle –

(a) requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and

(b) furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount, the goods vehicle, the goods and the documents so seized may be released.

[PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.]

(6) The Commissioner may permit the owner [driver] or person in charge of goods vehicle to remove any goods or goods vehicle seized under sub-section (4) subject to an undertaking –

(a) that the goods and goods vehicle shall be kept in the office, godown or other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and

(b) that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner, and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.

(7) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

(8) Nothing contained in this section shall apply to the rolling stock as defined in the Railway Act 1989 (24 of 1989)."

6. The relevant rule is Rule 43 which provides as follows: -

"43. Records to be carried by a person in charge of a goods vehicle (1) The owner, driver or person in charge of the goods vehicle shall carry the Transport Receipt in Form DVAT-32, sale invoice or delivery note in Form DVAT- 33, and, as the case may be, export declaration in Form DVAT-34, import declaration in Form DVAT-35 or transit slip in Form DVAT 35A.

(2) For obtaining export or, as the case may be, import Declaration in Forms DVAT-34 and DVAT-35, an application in Form DVAT 46 shall be made to the Commissioner by the user dealer.

(3) Account of the usage of Forms DVAT 34 and DVAT 35 shall be maintained by the user dealer in Form DVAT 35B which shall be open for inspection by the Commissioner and shall be filed with the Commissioner every quarter or with every new application for obtaining Form DVAT 34 and DVAT 35, whichever is earlier.

(4) A declaration in Form DVAT 34 or DVAT 35 shall be in three parts. Each part shall be filled and signed by consignor, the consignee and the transporter, as the case may be. The owner, driver or person in charge of the goods vehicle shall keep with him such declaration forms in duplicate while carrying the goods. He shall submit the declaration forms in duplicate at the check post or barrier. The officer in charge shall retain the original part of such declaration and shall return to the owner, driver or person in charge of the goods vehicle, the duplicate part duly verified, signed and stamped. The duplicate part of such declarations shall be furnished by the user dealer to the Commissioner along with the account of such declaration maintained in Form DVAT 35B at the time of obtaining of additional declaration forms.

(5) Where the goods vehicle entering Delhi, is bound for any place outside Delhi and passes through Delhi, the owner, driver or the person in charge of the goods vehicle shall furnish, in duplicate, to the officer in charge of the check post or barrier, a Transit Slip in duplicate in Form DVAT-35A duly filled, signed and verified. He will obtain from the officer in charge of the check post or the barrier one copy of the Transit Slip duly countersigned. The owner, driver

or person in charge of the goods vehicle shall deliver within twelve hours of its entry into Delhi, the said countersigned copy to the officer in charge of the check post or barrier at the point of his exit from Delhi.

(6) The owner, driver or his agent or the person in charge of the goods vehicle when required to furnish security under sub-section (5) of section 61 shall furnish security in the form and in the manner and subject to the conditions specified in rule 23. The security referred to in this sub-rule shall be furnished within the time specified in the order not exceeding seven days from the detention of the goods. The Commissioner shall issue to the depositor a receipt in Form DVAT 47 acknowledging the receipt of the security. Delhi VAT Rules as on 5th March 2014 Rule 44 by Rakesh Garg, FCA (4)

(7) The officer in charge of the check post or barrier detaining the goods shall make a report to the Commissioner about all the facts and circumstances of the case within twelve hours of the detention of the goods.

(8) Where the goods detained are not released owning to the failure to furnish the security required to be furnished under sub-section (5) of section 61 within the specified time, the notified goods detained shall be sold by public auction after following the procedure as specified in rule 41."

7. It is evident from the above factual narrative that like in the past when the Delhi Sales Tax Act was in force, the DVAT authorities after the enactment of Delhi VAT Act, 2005 have chosen not to publish the relevant forms. They merely appear to have drafted certain forms and have assumed that the general public, i.e., goods transporters are expected to know it and use it. It is a well settled proposition of law as espoused in B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658 that in the absence of a proper publication of the rules or statutory instrument, the action of the executive authorities is unsupportable by law. Both Section 61 in its relevant part and Rule 43 clearly speak of statutory forms. In fact Rule 43 remains unamended - however, according to the respondents Form Nos.34 and 35 are no longer in existence. In other words, the rule speaks of DVAT 34 & 35/35A; however, the Revenue now speaks of DS-2 as the relevant form in existence. Without an amendment of the Rules or publication thereof or without appropriate publication of the forms, the executive authority, i.e., the DVAT Department cannot insist that carriers and goods vehicle

owners/operators are under any responsibility or obligation to carry such unpublished forms. Any action taken by them towards detention or initiation of penalty, consequent to the alleged non-adherence to such condition is bound to fail.

8. In view of the above discussion, the petitioner is clearly entitled to relief. It is held that till the relevant forms are published in accordance with law and the amended rules are brought into force again by operation of law, the transporters especially the goods carriers cannot be compelled to carry such documents with them under pain or coercive action such as detention and penalty.

9. It is stated by learned counsel for the respondents that action is being taken towards amending the rules and publication of forms.

10. The writ petition is allowed in the above terms. All applications are disposed.

[2017] 55 DSTC 18 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S.Muralidhar and Hon'ble Justice Najmi Waziri]

WP (C) 2282/2017

Garg Roadlines ... Petitioner

Versus

Commissioner, Trade & Taxes ... Respondent

Date of Order: 12 April, 2017

REVISION - SECTION 74A OF THE DVAT ACT, 2004 - GROUNDS FOR REVISION POWER OF REVISION - THE POWER UNDER SECTION 74A OF THE DVAT ACT IS NOT TO BE EXERCISED SLIGHTLY - IT IS A POWER COUPLED WITH THE DUTY TO ACT RESPONSIBLY AND BY THE COMPETENT AUTHORITY APPLYING MIND TO THE RELEVANT FACTS AND CIRCUMSTANCES OF THE CASE

REFUND – DELAY IN GRANTING REFUND-INTEREST TO BE PAID

INTEREST – DELAY IN GRANTING REFUND-INTEREST TO BE PAID

Facts of the Case

The petition effected sales of petroleum products and lubricants in Delhi and sales in the course of inter-State trade and commerce. After the

output tax adjustments, the Petitioner had excess of input tax credit for the tax period and therefore, entitled for refund. The Petitioner claimed refund in the return filed for in July 2010, and for the period since then till March 2012, a aggregate refund of Rs. 4,06,24,323 was due to the Petitioner. Instead of granting the refund due to the Petitioner for the month of July 2010 the Value Added Tax Officer framed a default assessment of tax, interest and penalty under Sections 32 and 33 of the Delhi Value Added Tax Act, 2004. The VATO concluded that the dealer was not allowed to make inter-state sale to registered dealer of other states Haryana, Punjab, Himachal Pradesh etc. as the dealer was authorized to sell MS/HSD only to all customers coming to RO premises for purchase of the same through Nozzle. The dealer was in possession of all the records and also he had furnished the statutory declarations in Form C along with evidence for dispatch of goods.

The Petitioner then filed objections under Section 74 of the DVAT Act before the Objection Hearing Authority. By an order dated 14th October 2016 Special Commissioner-II/OHA upheld the objections and set aside the impugned order of the Value Added Tax Officer holding:

> *"I am of the considered view that even if the agreement between M/s. Garg Roadlines and BPCL is prohibiting him to effect central sales, without having any specific reason or prohibition by CST Act or Rules, legitimate transactions of the dealer duly supported with relevant records/documents cannot be denied. Therefore, the impugned order passed by the learned AA cannot be upheld and liable to be set aside. Accordingly, the objection is accepted and the impugned order is set aside. Further, in the interest of justice, the Objector is given one more opportunity to appear before the learned Assessing Authority and to produce the relevant documents in support of his refund claimed. The learned AA is directed to consider the refund claim of the Objector afresh after giving reasonable opportunity of the dealer to be confronted with proper examination of the evidentiary documents/records produced or required to be produced as per rule and facts of the case."*

The matter should have normally come to an end with the above order dated 14th October 2016 and the Petitioner ought to have been issued the refund. In this context, it requires to be noticed that Section 38 of the DVAT Act provides that in the case of a monthly return, refund is to be allowed within one month from the date of filing the return and in any other case the refund is to be allowed within two months from the date of filing the return. In the present case under Section 38 (3) (i) of the DVAT Act,

refund had to be issued within one month from the date of furnishing of the return by the Petitioner. With there being utter laxity on the part of the DT&T in processing the Petitioner's claim for refund, the Petitioner filed Writ Petition (Civil) No.1541 of 2017 in this Court. The Hon'ble High court passed the following order:

*"**WP (C) 1541/2017***

Issue notice to the Respondents. Mr. Anuj Aggarwal, Advocate accepts notice for the Respondents.

It is stated by learned counsel for the Respondents that they will obtain instructions and in case the amounts are not refunded, the Respondents shall indicate by what dates the Petitioner would be refunded the amounts - through tabular chart.

The Respondents are directed to process the Petitioner's case for refund and ensure that the amounts are paid before the next date of hearing.

List on 22nd March 2017."

In the meanwhile, the Petitioner noted that on its Web ID the impugned unsigned and undated notice proposing the revision of the order ofOHA under Section 74A of the DVAT Act was uploaded and fixed for hearing on 28th February 2017 at 11.30 AM.

The present petition was thereafter filed on 7th March 2017.

Held

"The power under Section 74A of the DVAT Act is not to be exercised slightly. It is a power coupled with the duty to act responsibly and by the competent authority applying mind to the relevant facts and circumstances of the case. The notes on file proposing the exercise of power under Section 74A of the DVAT Act in this case do not satisfy this basic requirement. In the present case the undated and unsigned notice proposing the exercise of the revisionary jurisdiction was at best vague. It did not satisfy the basic requirement of the law, as explained in Commissioner of Central Excise, Bangalore v. Brindavan Beverages {P} Limited 2007 {213} ELT 487 (SC), viz., that the grounds should be clearly specified. In other words, "if the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold

that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice."

Why this exercise was sought to be undertaken at a stage when the refund was overdue, is not even adverted to. It appears to the Court that apart from the fact that there was a total non-application of mind to the facts of the case, there is sufficient indication from the notes on files that the invocation of the revisionary powers under Section 74A of the DVAT Act was to delay making the refund which was overdue for over six years. The Court is left no manner of doubt is that this was plainly an abuse of power vested in the Commissioner which calls for disapproval in strongest terms.

The Court accordingly sets aside the undated and unsigned notice of the Commissioner, VAT uploaded upholding on the Petitioner's Web 10 proposing the invocation of the powers under Section 74A of the DVAT Act to revise the order dated 14t h October 2016 of the OHA. Consequently, all the further proceedings undertaken by the Commissioner, VAT by way of revision under Section 74A of the DVAT Act pursuant to the said undated notice also hereby stand quashed.

A direction is issued to the Commissioner, VAT to ensure that the refund due to the Petitioner in relation to the monthly returns filed in July 2010 together with the interest accrued thereon is disbursed/paid into the account of the Petitioner not later than 8th May 2017. The DT&T shall also pay costs of Rs. 20,000 to the Petitioner within the same period."

Present for the Petitioner : Ruchir Bhatia, Advocate.

Present for the Respondent : Peeyoosh Kalra, Advocate.

Order

1. This writ petition by the Petitioner, Garg Roadlines, an authorized agent of Bharat Petroleum Corporation Limited ('BPCL'), and registered with the Department of Trade and Taxes ('DT&T') challenges the undated and unsigned notice No. F.CD:105350157/Ward 63 posted at the Web ID of the Petitioner for "revision under Section 74 (A) of the orders of the learned Special Commissioner-II/OHA" requiring the Petitioner to appear before the Respondent, Commissioner, Trade & Taxes on 28th February 2017 at 11.30 am.

2. Background to the present petition is that sales of petroleum products and lubricants made by the Petitioner in Delhi include sales in the course

of inter-State trade and commerce. It was stated that after tax adjustments, the Petitioner had excess of input tax credit for the tax period and therefore, was entitled for refund. It is stated that the Petitioner claimed refund in the return filed in July 2010. For the period since then till March 2012, according to the Petitioner, a aggregate refund of Rs. 4,06,24,323 was due to the Petitioner. It is stated that instead of granting the refund due to the Petitioner for the month of July 2010 the Value Added Tax Officer ('VATO') framed a default assessment of tax, interest and penalty under Sections 32 and 33 of the Delhi Value Added Tax Act, 2004 ('DVAT Act'). The Petitioner then filed objections under Section 74 of the DVAT Act before the Objection Hearing Authority ('OHA').

3. By an order dated 14th October 2016 Special Commissioner-II/ OHA upheld the objections and set aside the impugned order of the Value Added Tax Officer ('VATO'). Paras 8 and 9 of the said order, which set out the entire context in which the objections of the Petitioner were sustained read as under:

> "8. I have gone through the records and documents placed on the file and have heard the both Shri Goel, the learned counsel of the objector as well as Shri Vikas Gupta, the DR in the matter at length. During hearing of the case, comments of the Ward In-charge with regard to the default assessment framed was also sought who in his written submission supported the impugned order on the ground that it is nowhere mentioned that the dealer can make inter-state sales in the licence/agreement dated 31st March 2005 signed between BPCL and the Objector. After hearing the argument of learned counsel and DR and taking into account the facts and the circumstances of the case, it is observed, in the present case that the assessment was framed by rejecting inter-state sales only on the basis of a clarification sought by the then learned AA from BPCL wherein it is mentioned that the dealer is authorized to sale MS/HSD to all customers coming to RO premises for purchase of the same through Nozzle. Apart from that it is also observed that the objector is legitimately fulfilled all the conditions laid down in the Act to effect interstate sales. Further, on perusal of the contents of the letter of the Territorial Manager, BPCL it seemed that he has not categorically denied the specific query of learned AA who sought clarification that "whether the dealer is allowed to make inter-state sale, i.e., to register dealer of other states Haryana, Punjab, Himachal Pradesh etc." It is just responded that "the dealer is authorized to sale MS/HSD to all customers coming to RO premises for purchase of the same through Nozzle." I am of

the view that the learned AA is failed to take up the issue further with the authorities of BPCL to clarify the ambiguity on the issue in question as the same was not clarified specifically from BPCL. With regard to this, the learned counsel for the Objector has raised a valid point that it is nowhere mentioned in the letter that the Objector cannot make inter-state sale. The Objector can make sale only through Nozzle which condition the Objector legitimately fulfilled as all sales effected from the RO premises through the Nozzle. It is irrelevant to question whether the objector can make interstate sale or in absence of any prohibition by law.

9. Further, during hearing the case, it is established that the objector has in possession of all the records and also he had furnished the statutory declarations in Form C along with evidence for dispatch of goods. Therefore, I am of the considered view that even if the agreement between M/s Garg Roadlines and BPCL is prohibiting him to effect central sales, without having any specific reason or prohibition by CST Act or Rules, legitimate transactions of the dealer duly supported with relevant records/documents cannot be denied. Therefore, the impugned order passed by the learned AA cannot be upheld and liable to be set aside. Accordingly, the objection is accepted and the impugned order is set aside. Further, in the interest of justice, the Objector is given one more opportunity to appear before the learned Assessing Authority and to produce the relevant documents in support of his refund claimed. The learned AA is directed to consider the refund claim of the Objector afresh after giving reasonable opportunity of the dealer to be confronted with proper examination of the evidentiary documents/records produced or required to be produced as per rule and facts of the case."

4. The matter should have normally come to an end with the above order dated 14th October 2016 and the Petitioner ought to have been issued the refund. In this context, it requires to be noticed that Section 38 of the DVAT Act provides that in the case of a monthly return, refund is to be allowed within one month from the date of filing the return and in any other case the refund is to be allowed within two months from the date of filing the return. In the present case under Section 38 (3) (i) of the DVAT Act, refund had to be issued within one month from the date of furnishing of the return by the Petitioner. This obviously was not done. Additionally as pointed out by the Petitioner, Section 38 (4) was not attracted since no notice of audit under Section 58 of the DVAT Act was issued nor any additional information sought under Section 59 of DVAT Act. Section 38

(5) of DVAT Act was also not attracted since no security as condition for issuance of refund was demanded within fifteen days from the date of furnishing the return. In other words there was absolute no impediment for the passing of the refund order. The delay in granting refund has resulted in the Petitioner being entitled to receive interest in terms of Section 42 of the DVAT Act.

5. In several judgments, this Court has explained the law in relation to refund under the DVAT Act. Illustratively the decisions in *Ingram Micro India Pvt Ltd v. Commissioner, Department of Trade & Taxes (2016) 89 VST 312 (Del), Prima Papers & Packers v. Commissioner of VAT (2016) 94 VST 347, Swarn Darshan Impex (P) Limited v. Commissioner, Value Added Tax (2010) 31 VST 475 (Del) and Vizien Organics v. Commissioner, Trade & Taxes* [decision dated 19th January 2017 in W.P. (Civil) 10701 of 2016] may be referred to. The legal position has been clarified by the Commissioner, DVAT in Circular No. 6 dated 15th June 2005, the relevant extract of which reads as under:

> *"The ward VATO's shall scrutinize the correctness of the amount of the cash refund claimed and shall pass the refund order in DVAT-22 within a period of 15 days from the date of receipt of the return in the Front Office without fail, unless the return of the dealer has been picked for seeking additional information or audit and in such cases, intimation shall be given by the Audit Wing of the Department/ the designated VAT authority of the wing/VATO concerned in Audit wing to the concerned VATO in the Operation Wing within 10 days from the receipt of the return in the Front Office. The DVAT-22 books shall be supplied to each ward by the Caretaking Branch Ward VATO shall issue the refund order in DVAT-22 in triplicate without any cutting or overwriting – one copy shall be sent to the claimant dealer under registered post, one copy shall be sent to VATO (Refund) in the Collection Branch, who shall complete data of refund orders received from different wards in a floppy on daily basis for onward transmission to RBI and the third copy shall be retained by the ward VATO. In case the amount lesser than the amount of refund claimed by the dealer is allowed by the VATO in Operation Wing as refund payable for the reasons other than the reason of set off/adjustment, a covering letter shall be attached with the dealers copy of DVAT-22 explaining the reasons of such reduction and the covering letter as well as dealers copy of DVAT-22 shall be sent to the dealer."*

6. With there being utter laxity on the part of the DT&T in processing the Petitioner's claim for refund, the Petitioner filed Writ Petition (Civil)

No.1541 of 2017 in this Court. On 20th February 2017 the following order was passed:

> ***"WP (C) 1541/2017***
>
> *Issue notice to the Respondents. Mr. Anuj Aggarwal, Advocate accepts notice for the Respondents.*
>
> *It is stated by learned counsel for the Respondents that they will obtain instructions and in case the amounts are not refunded, the Respondents shall indicate by what dates the Petitioner would be refunded the amounts – through tabular chart. The Respondents are directed to process the Petitioner's case for refund and ensure that the amounts are paid before the next date of hearing. List on 22nd March 2017."*

7. In the meanwhile, the Petitioner noted that on its Web ID the impugned unsigned and undated notice proposing the revision of the order of OHA under Section 74A of the DVAT Act was uploaded. The said notice reads as under:

> *"Whereas, your case has been referred to this office for considering it for Revision under Section 74 (A) of the Orders of learned Special Commissioner-II/OHA.*
>
> *In this regard, I am directed to inform that your case has been fixed for hearing on 28th February 2017 at 11.30 AM. You are hereby directed to appear in person or through authorized representative in respect of your claim along with the following documents:*
>
> 1. *Purpose for which the items are being purchased by the purchasing dealer.*
> 2. *Nature of business of the purchasing orders.*
> 3. *If purchasing dealer is manufacturer, list of items manufactured or items dealt by him."*

8. The present petition was thereafter filed on 7th March 2017 and came up for first hearing on 10th March 2017. The Court directed by its order dated 10th March 2017 that "on the next date of hearing, all original documents pertaining to the impugned notice along with relevant documents shall be produced in Court." It was further directed that "no further proceedings shall be conducted in relation to the impugned notice (Annexure P-1) till the next date of hearing."

9. Meanwhile, on 22nd March 2017 Writ Petition (Civil) No. 1541 of 2017 was heard. The Court passed the following order in which it took note of the fact of the pendency of the present writ petition:

"The Petitioner has claimed a refund of Rs. 4,06,24,323 along with interest towards excess VAT amount paid by it for various periods. The Respondents were directed on 20th February 2017 to process the Petitioner's application and make necessary orders; they were also directed to ensure that the amounts were remitted. It is informed by the Respondents, i.e., DVAT Department that on 17th February 2017 a notice was issued under Section 74A of the DVAT Act proposing to revise an order. Though the notice is unclear as to which period is involved, the details of the proposal, as contained in the file produced in Court by the Respondents, clarify that it is in respect of the refund claimed for Rs. 12,55,471 for the second quarter of AY 2010-11. The file further reports that the query which has led to the notice, i.e., "whether the dealer is allowed to make inter-state sale, i.e., to registered dealers of other States Haryana, Punjab and Himachal Pradesh, and the fact that the Assessing Authority failed to take the issue further with authorities of BPCL to clarify the ambiguity".

It is stated by the counsel for the Respondents that another writ petition, i.e., WP (C) 2282 of 2017 was preferred by the present Petitioner, in which, on 10th March 2017, the show cause notice dated 17th February 2017 and further proceedings emanating therefrom have been stayed. That writ petition is now listed on 12th April 2017.

It is quite evident from the above discussion that only impediment which the Revenue/DVAT has put forward to withhold the Petitioner's claim for the larger sum of over Rs. 4 crores is the fresh show cause notice under Section 74A issued on 17th February 2017. Considering the circumstances, this Court is of the opinion that the Respondents should, while processing the Petitioner's claim for refund of Rs. 4 crores, keep aside the amount of Rs. 12,55,471, which is proposed to be adjudicated through the show cause notice impugned in WP (C) 2282 of 2017. It is ordered accordingly. Needless to add, interest for the balance – (Rs. 4.06 crore – Rs. 12,55,471), payable to the Petitioner excluding interest for the withheld, shall be calculated and paid to the Petitioner. The Respondents shall comply with this direction within three weeks from today.

The petition is accordingly disposed off.

A copy of this order be given dasti to parties under the signatures of the Court Master."

10. In the counter-affidavit filed on behalf of the Respondent, it is stated that the Territory Manager, BPCL by letter dated 2nd June 2014 informed the DT&T that the Petitioner was authorized to sell MS/HSD "to all the customers coming to the retail outlet premises for purchase of the same through nozzle". It is then stated that the Petitioner had failed to produce any other documents/written permission issued by BPCL permitting it to make interstate sale of MS/HSD. Accordingly, the Assessing Authority ('AA') had by its order dated 18th January 2016 rejected the interstate sale shown and treated it as local sale and taxed it accordingly. According to DT&T, the sale of the product has to be from the nozzle installed at the petrol pump and therefore, the Petitioner was authorized to conduct only 'business to consumers' sale and not 'business to business' sale. Since there was no movement of goods from one State to another, to bring it within the ambit of inter-state sale as contemplated by Section 3 of the Central Sales Tax Act, 1956 ('CST Act'), the VATO decided to treat such inter-state sales as local sales.

11. The Respondent however acknowledges that the OHA by the order dated 14th October 2016 has set aside the above default assessment order. No attempt has been made by the Respondent to point out what it found objectionable in the order of the OHA that warranted the exercise of revisionary powers of the Commissioner under Section 74 A of the DVAT Act.

12. The Court has, therefore, perused the original file to ascertain the reasons that weighed with the Commissioner for deciding to exercise the revisionary power under Section 74A of the DVAT Act. In the main file, there is a note that is undated and unsigned and titled „Revision of orders of M/s. Garg Roadlines.' It traces out the history of the case including the fact of all C Forms and GRs were verified from the concerned states and transporters and found to be genuine. It also notes that the OHA observed that since the Objector has in his possession all the records including C forms and the proof of dispatch of goods, transactions of the dealer cannot be denied. It also notes that the OHA observed that "even if the agreement between BPCL and Garg Roadlines prohibited him from effecting central sales, without having any specific reason or prohibition by CST Act or Rules, legitimate transaction of the dealer duly supported with relevant records/documents cannot be denied." The note ends with the following paragraph:

> "The case of revision arises because of the reply of the HPCL, i.e., which says that M/s. Garg Roadlines is authorized to sale MS/HSD to all the customers coming to the RO premises for purchase of the same through Nozzle. Although there is no dispute that the sale is interstate sale."

13. The above note which was supposed to be considered by the Commissioner is not referred to in the noting part of the file. The noting part is from pages 1/N up to 14/N. What is relevant for the present purpose is that from pages 1/N to 13/N, the notings speak of the claim for refund. Page 13/N is exclusively on the subject 'refund of July 2010'. In the said note prepared by Mr. Jitendra Kumar, AC, Ward-63 it is inter alia noted that "in compliance with the order of the OHA dated 14th October 2006 the fresh order dated 16th November 2016 has been passed by the Assessing Authority thus reducing the demand to NIL." It ends by stating that "in view of the above the case regarding refund of Rs. 12,55,572 for II quarter 2010-11 in respect of M/s. Garg Roadlines (TIN No. 07170291427) is submitted for consideration please." The next page, i..e, 14/N contains the note of the Joint Commissioner (Zone-VI), Anand Kumar Tiwari, dated 21st December 2016. The Joint Commissioner sets out the finding of the OHA and in particular finding that "nowhere in the letter of the Manager, BPCL it is mentioned that the Objector cannot make inter-state sale." Following this, it its noted:

> "In the absence of categorical clarification by the BPCL whether inter-state sales can be made by the dealer and also the fact that petrol pumps are licensed to make retail sale from their outlets, it is not very clear whether sales of this nature can be effected by the said dealer. It is also likely to give rise to tax loss to the exporting state. It is, therefore, requested that Commissioner (VAT) may invoke the provisions of Revision under Section 74A of the DVAT Act, 2004 for revision of the impugned order of OHA."

14. The above note of the Joint Commissioner is shown as having been placed before the Commissioner, VAT. However, but there is no signature or endorsement of the Commissioner, VAT acknowledging that he has seen and has agreed with the note. In other words, there is nothing to indicate that the Commissioner, VAT took a conscious decision that the revisionary power under Section 74A should be invoked. What the notings portion of the file next contains are the order sheets in the revision proceedings. This begins with an order dated 17th February 2017 signed by the Commissioner, VAT which simply states:

> "The matter of M/s. Garg Roadlines has been received from Joint Commissioner (Zone-VI) for invoking the provisions of revision under Section 74(A) of DVAT Act, 2004 for revision of impugned order of OHA.
>
> Issue notice to M/s. Garg Roadlines and BPCL for 28th February 2017."

15. Apart from the fact that there are no reasons penned by the Commissioner, VAT on the file justifying the invocation of the revisionary power under Section 74A of the DVAT Act, the above unsigned note titled „Revision of orders of M/s. Garg Roadlines', which forms part of the main file is not even referred to. Even the note prepared by the Joint Commissioner (JC) (Zone-VI) makes no reference to the said note. It gives no justifiable reason for invoking the revisionary power under Section 74 A of the DVAT Act. Even the reasons why the order of the OHA is unacceptable to the DT&T are absent. As noticed earlier, the impugned notice (undated and unsigned) uploaded on the Petitioner's web id proposing the exercise of the revisionary power under Section 74 A DVAT Act is equally vague and without any reasons.

16. There is also no application of mind to the consequences of the decision to invoke the revisionary power under Section 74 A DVAT Act. go in for revision. For instance, the note by the JC fails to note that under Section 38 of the DVAT Act the Department was bound to process the refund application, which in this case was pending since July 2010, within one month from the date of the filing of the return. It further failed to note that interest had payable under Section 42 of the DVAT Act had by this time grown to a substantial sum by now. The exercise of the power under Section 74 A of the DVAT at this stage would entail an additional burden on the exchequer in the event the attempt was not successful.

17. The power under Section 74A of the DVAT Act is not to be exercised slightly. It is a power coupled with the duty to act responsibly and by the competent authority applying mind to the relevant facts and circumstances of the case. The notes on file proposing the exercise of power under Section 74A of the DVAT Act in this case do not satisfy this basic requirement. In the present case the undated and unsigned notice proposing the exercise of the revisionary jurisdiction was at best vague. It did not satisfy the basic requirement of the law, as explained in *Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Limited 2007 (213) ELT 487 (SC)*, viz., that the grounds should be clearly specified. In other words, "if the allegations in the show cause notice are not specific and are on the

contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice."

18. Why this exercise was sought to be undertaken at a stage when the refund was overdue, is not even adverted to. It appears to the Court that apart from the fact that there was a total non-application of mind to the facts of the case, there is sufficient indication from the notes on files that the invocation of the revisionary powers under Section 74A of the DVAT Act was to delay making the refund which was overdue for over six years. The Court is left no manner of doubt is that this was plainly an abuse of power vested in the Commissioner which calls for disapproval in strongest terms.

19. The Court accordingly sets aside the undated and unsigned notice of the Commissioner, VAT uploaded upholding on the Petitioner's Web ID proposing the invocation of the powers under Section 74A of the DVAT Act to revise the order dated 14th October 2016 of the OHA. Consequently, all the further proceedings undertaken by the Commissioner, VAT by way of revision under Section 74A of the DVAT Act pursuant to the said undated notice also hereby stand quashed.

20. A direction is issued to the Commissioner, VAT to ensure that the refund due to the Petitioner in relation to the monthly returns filed in July 2010 together with the interest accrued thereon is disbursed/paid into the account of the Petitioner not later than 8th May 2017. The DT&T shall also pay costs of Rs. 20,000 to the Petitioner within the same period.

21. The petition is disposed of in the above terms.

[2017] 55 DSTC 30 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mr. Justice Chander Shekhar]

W.P(C) 1001/2017

Asian Polymers ... Petitioner

Versus

Commissioner of Trade & Taxes & Anr. ... Respondent

Date of Order: 3 May, 2017

REFUND – SECTION 38 OF DVAT ACT – PETITIONER FILED RETURNS FOR THE TAX PERIOD NOVEMBER, DECEMBER 2012, JANUARY AND MARCH

2013 CLAIMED REFUND – DEPARTMENT DID NOT PROCESS REFUND – NOTHING WAS DONE ON THE REFUND CLAIM – WRIT PETITION FILED ON 2ND FEBRUARY 2017 PRAYED THAT REFUND BE GRANTED WITH INTEREST UNDER SECTION 42 OF DVAT ACT – NOTICE WAS ISSUED AND ACCEPTED BY REVENUE – CASE LISTED FOR HEARING ON 06.03.2017 AND 28.03.2017 – NO ACTION TAKEN BY REVENUE FOR REFUND – ON 31.03.2017 VATO PASSED FOR SEPARATE ORDERS, WHICH ARE NOTICES OF DEFAULT ASSESSMENT OF TAX AND INTEREST UNDER SECTION 32 OF DVAT ACT CREATED DEMAND FOR ABOVE TAX PERIODS – REVENUE PLEADED THAT THE DEPARTMENT WAS WITHIN ITS RIGHTS TO RE-OPEN THE ASSESSMENT AND THIS WAS WITHIN TIME BECAUSE THE PERIOD WITHIN WHICH SUCH RE-ASSESSMENTS SHOULD BE MADE UNDER SECTION 34(1) OF THE ACT EXPIRED ON 31ST MARCH, 2017, THE VERY DATE ON WHICH THE AFOREMENTIONED ASSESSMENT ORDERS WERE PASSED. THE COURT WAS NOT SATISFIED WITH ABOVE EXPLANATION.

Held

The Court is, therefore, not able to sustain any of these orders of notice of default assessment of tax and interest passed on 31st March, 2017 by the VATO, Ward-50 creating fresh demands in respect of the periods of November and December, 2012 and January and March, 2013. The said notices of default assessment of tax are hereby quashed. It is directed that the DVAT Department will now pay into the account of the Petitioner the refund amount, together with interest that has accrued thereon, not later than two weeks from today. If there is non-compliance with this direction, it will be open to the Petitioner to seek appropriate remedies in accordance with law. The writ petition is allowed in the above terms with costs of Rs.20,000 which will be paid by the DVAT Department to the Petitioner within two weeks. A copy of this order be delivered forthwith to the Commissioner, VAT through a Special Messenger.

By Court - The Commissioner, VAT is directed to examine why fresh demands are being created by the VATOs virtually on the last date of the expiry of the limitation period and that too after a writ petition has been filed by the Assessee seeking directions for refunds that are long overdue, and after notice has been issued thereon. The Commissioner, VAT should ensure that this kind of abuse of statutory powers must stop.

Cased Referred to

1. *M/s. Swarn Darshan Impex v. Commissioner of Trade & Taxes (2010) 31 VST 475 (Del)*
2. *M/s Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347 (Del)*

Present for the Petitioner : Mr. S. K. Khurana, Advocate

Present for the Respondent : Mr. Satyakam, Advocate

Order

Dr. S. Muralidhar, J

CM No. 4631/2017 1.

Allowed, subject to all just exceptions.

WP(C) No. 1001/2017

2. This is a petition filed on 2nd February, 2017 with the prayer that the Respondents should grant refund in the sum of Rs. 14,41,004/-, together with interest under Section 42 of the Delhi Value Added Tax, 2004 ('DVAT Act').

3. The Petitioner's refund applications pertaining to the tax period of November and December, 2012 and January and March, 2013 have been pending with the Respondents. Although Section 38 of the DVAT Act obliges the DVAT Department to process the claims within one month, since this a monthly return, nothing was done on the refund claim. This is contrary to the decisions of this Court in Swarn Darshan Impex P. Ltd. v. Commissioner, Value Added Tax & Anr. (2010) 31 VST 475 (Del) and Prime Papers & Packers v. Commissioner of VAT & Ors. (2016) 94 VST 347 (Del).

4. In those decisions, the Court has also emphasised that the Value Added Tax Officer ('VATO') should not view pendency of the refund application as an opportunity to revisit the assessments of the earlier years and create fresh demands, particularly when the time for making refunds has long lapsed.

5. In the present petition, notice was issued and accepted by learned counsel for the DVAT Department on 6th February, 2017. Since then, the matter has been listed on 6th March, 2017 and again on 28th March, 2017. Throughout this period, the VATO of Ward-50, who is the concerned VATO as far as the Petitioner is concerned, chose not take any action. He waited till 31st March, 2017 to pass four separate orders of that date, which are notices of default assessments tax and interest under Section 32of DVAT Act, creating demands for the periods for November 2012, December 2012, January 2013 and March 2013.

6. The Court has been shown all the four orders. These are standard orders, with the wording virtually being the same, with only the figures being different. As a sample, the first default assessment order for the period November 2012 is reproduced:

"Whereas I am satisfied that the dealer has not furnished returns/ furnished incomplete returns or incorrect returns/furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004/any other reason. The dealer has claimed refund of Rs.3,25,750/- in the Nov 2012-13 As per rule 34(9) of DVAT rules 2005 .... Before allowing the claimed for refund to a dealer under section 38 of the Act, the Authority concerned shall satisfy himself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are fulfilled. Further circular no.6 of 2014-15 dated 04/08/2014 of Special Commissioner (Policy) has also directed to verify the ITC before allowing the refund. In the instant case, ITC is not verified of Rs.8,39,723/- is disallowed as per section 9(2)(g) of DVAT Act.

The dealer is hereby directed to pay an amount of Rs.8,39,723/- and furnish details of such payment in Form DVAT-27A along with proof of payment to the undersigned on or before 30-05-2017 for the following tax period(s)-

Tax Period	Turnover reported by the dealer	Turnover assessed	Tax reported/paid
(1)	(2)	(3)	(4)
Nov-2012	84,40,438	0	0

Tax assessed	Additional tax due (5-4)	Interest	Total amount due (6+7)
(5)	(6)	(7)	(8)
8,39,723	8,39,723	0	8,39,723

Signature : RAJESH KUMAR
Designation : VATO (Ward 50)
Place : Delhi
Date : 31-03-2017"

7. The only justification put forth by Mr. Satyakam, learned Additional Standing Counsel for the DVAT Department is that under Section 32 read with Section 34(1) of the DVAT Act, the Department was within its rights to re-open the assessment and this was within time because the period within which such re-assessments should be made under Section 34(1) of the Act

expired on 31st March, 2017, the very date on which the aforementioned assessment orders were passed.

8. This Court is not satisfied with the above explanation. The VATO concerned is present in Court with the records. The Court has perused the said records. What led to the passing of the orders is a note prepared for the first time by the VATO on 30th March, 2017. Clearly, the said note has been prepared at the last minute. The VATO was conscious of the fact that the present petition has been pending in which notice was issued way back on 6th February, 2017. Why the VATO had to wait till the last date to prepare such a note is not explained.

9. It is plain to the Court that it is only when the Assessee came forward with the present petition complaining of the failure by the DVAT Department to process its refund claim in terms of Section 38 of the DVAT Act, that the DVAT Department decided to examine the return filed more than four years earlier. While, technically, it could be argued that these default assessment orders were passed within time they were in fact issued on the last date of expiry of limitation. The Court cannot be blind to what the orders really purport to do. They are intended to frustrate the issuance of refund orders for the periods in question which are long overdue.

10. The Court is constrained to observe that there has been a persistent attempt by the DVAT Department to somehow ensure that the refund claims are defeated by creating fresh demands which are then adjusted against the refund amount. This is a pattern that the Court has been observing in several petitions listed before it on a daily basis. Despite several judgments of this Court lamenting the utter failure of the DVAT Department to act in accordance with law, the approach and attitude of the DVAT Department towards refund claims has not changed one bit. The harassed dealers awaiting refunds for several years are compelled to repeatedly come to this Court for orders.

11. The Court has frowned upon the above conduct of the DVAT Department in several of its judgments including *Teleworld Mobiles Pvt. Ltd. V. Commissioner of Trade & Taxes, (2016) 94 VST 358 (Del)*. On a daily basis, the Court has been passing orders, giving time-bound directions to the DVAT Department to process the refund claims and pay amounts. Yet, nothing seems to alter the routine behaviour of the VATOs concerned. Like in the present case, they utilise the opportunity provided by the pendency of the writ petition seeking refund that is long overdue to create fresh demands. This conduct of the VATOs deserves the strongest condemnation. It is nothing but an abuse of statutory powers. The mere fact that default assessment of tax and interest is being passed on the

last date of the expiry of the limitation period, will not in the circumstances noticed hereinbefore, save such orders from the vice of illegality.

12. The Court is, therefore, not able to sustain any of these orders of notice of default assessment of tax and interest passed on 31st March, 2017 by the VATO, Ward-50 creating fresh demands in respect of the periods of November and December, 2012 and January and March, 2013. The said notices of default assessment of tax are hereby quashed.

13. It is directed that the DVAT Department will now pay into the account of the Petitioner the refund amount, together with interest that has accrued thereon, not later than two weeks from today. If there is non-compliance with this direction, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

14. The Commissioner, VAT is directed to examine why fresh demands are being created by the VATOs virtually on the last date of the expiry of the limitation period and that too after a writ petition has been filed by the Assessee seeking directions for refunds that are long overdue, and after notice has been issued thereon. The Commissioner, VAT should ensure that this kind of abuse of statutory powers must stop.

15. The writ petition is allowed in the above terms with costs of Rs. 20,000 which will be paid by the DVAT Department to the Petitioner within two weeks. A copy of this order be delivered forthwith to the Commissioner, VAT through a Special Messenger.

16. *Dasti* under the signature of the Court Master.

[2017] 55 DSTC 35 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhat & Hon'ble Mr. Justice Najmi Waziri]

W P (C) Nos.1757/2017 & other connected matters

ABB India Ltd. ... Petitioner

Versus

The Commissioner Trade & Taxes. ... Respondent

Date of Order: 27 February, 2017

ENTERTAINMENT OF APPEAL – SECTION 76 (4) OF DVAT ACT, 2004 – PETITIONER FILED APPEALS AGAINST OHA ORDERS – APPLICATIONS FOR

WAIVER OF PRE-DEPOSIT – CONDITION WHICH IS PREMISED UPON THE DIVISION BENCH'S RULING OF THIS COURT – AND WHICH WAS AFFIRMED BY THE SUPREME COURT IN COMMISSIONER, DELHI VALUE ADDED TAX Vs. ABB LIMITED (2016) 6 SCC 791, THE TRIBUNAL HELD THAT THE MATTER REQUIRED CLOSER EXAMINATION AND ON THAT PREMISE GRANTED RELIEF TO THE EXTENT THAT THE PETITIONER WAS PERMITTED TO DEPOSIT 20% OF THE TAX AND INTEREST DEMAND AND 10% OF THE PENALTY AMOUNT – PETITIONER CARRIED THE MATTER TO HIGH COURT – IT IS CONTENDED BY THE PETITIONER THAT THERE IS NO RADICAL DIFFERENCE BETWEEN THE TRANSACTIONS THAT WERE THE SUBJECT MATTER IN THE PREVIOUS RULING AND THE PRESENT CASE, SAVE AND EXCEPT ITS CUSTOMERS ARE DIFFERENT – MATTER IS COVERED BY THE EARLIER CASE OF PETITIONER I. E. COMMISSIONER, DVAT VS. ABB LIMITED (2016) 6 SCC 791 - THE REVENUE IS UNDOUBTEDLY CORRECT IN SUBMITTING THAT THE DVAT TRIBUNAL HAS GRANTED SIGNIFICANT RELIEF TO THE PETITIONERS. AT THE SAME TIME, THE COURT NOTICES THAT THE DECLARATION OF LAW BY THE SUPREME COURT WAS IN RESPECT OF ALMOST THE NATURE OF THE TRANSACTIONS AS IN THIS CASE; THEY DO NOT PRIMA FACIE DIFFER FROM THE FACTS THAT LED TO THE JUDGMENT OF THE DIVISION BENCH (AS ENDORSED BY THE SUPREME COURT). NO SIGNIFICANT MATERIAL PARTICULARS WERE SHOWN TO DISTINGUISH THE TWO CASES.

Held

This Court is of the opinion that the impugned orders to the extent that they direct the petitioners to deposit 20% of the tax and interest demanded and 10% penalty assessed cannot be sustained. They are accordingly set aside.

The DVAT Tribunal shall proceed to hear the appeals on merits and render its decision preferably within three months from today.

Cased Referred to

1. *ABB Limited Vs. The Commissioner, Delhi Value Added Tax 194 (2012) DLT 97 (DB).*

2. *Commissioner, Delhi Value Added Tax Vs. ABB Limited (2016) 6 SCC 791*

Present for the Petitioner	:	Mr. R. Jawaharlal, Mr. Siddhart Bawa, Mr. A. K. Bhardwaj, Mr. Manish Hirani and Mr. Shyamal Anand, Advocates
Present for the Respondent	:	Mr. Shadan Farasat and Mr. Ahmed Said, Advocates

Order

S. Ravindra Bhat (Oral):-

CM Nos.7805/2017, 7807/2017, 8005/2017, 8007/2017, 8009/2017, 8011/2017, 8013/2017, 8015/2017, 8017/2017, 8019/2017, 8021/2017, 8023/2017, 8025/2017, 8027/2017, 8029/2017, 8031/2017, 8033/2017, 8035/2017, 8037/2017, 8039/2017, 8041/2017, 8043/2017, 8045/2017, 8047/2017, 8049/2017, 8051/2017, 8053/2017, 8055/2017, 8057/2017, 8059/2017, 8061/2017, 8063/2017, 8065/2017, 8067/2017, 8069/2017, 8071/2017, 8073/2017, 8075/2017, 8077/2017, 8079/2017, 8081/2017, 8083/2017, 8085/2017, 8087/2017, 8089 /2017& 8091/2017 (for exemptions)

1. Allowed, subject to all just exceptions.

2. The applications are disposed off.

W.P.(C) No. 1757/2017 & CM No.7804/2017,
W.P.(C) No. 1758/2017 & CM No.7806/2017
W.P.(C) No. 1803/2017 & CM No.8004/2017
W.P.(C) No. 1804/2017 & CM No.8006/2017
W.P.(C) No. 1805/2017 & CM No.8008/2017
W.P.(C) No. 1806/2017 & CM No.8010/2017
W.P.(C) No. 1807/2017 & CM No.8012/2017
W.P.(C) No. 1808/2017 & CM No.8014/2017
W.P.(C) No. 1809/2017 & CM No.8016/2017
W.P.(C) No. 1810/2017 & CM No.8018/2017
W.P.(C) No. 1811/2017 & CM No.8020/2017
W.P.(C) No. 1812/2017 & CM No.8022/2017
W.P.(C) No. 1813/2017 & CM No.8024/2017
W.P.(C) No. 1814/2017 & CM No.8026/2017
W.P.(C) No. 1815/2017 & CM No.8028/2017
W.P.(C) No. 1816/2017 & CM No.8030/2017
W.P.(C) No. 1817/2017 & CM No.8032/2017
W.P.(C) No. 1818/2017 & CM No.8034/2017
W.P.(C) No. 1819/2017 & CM No.8036/2017
W.P.(C) No. 1820/2017 & CM No.8038/2017
W.P.(C) No. 1821/2017 & CM No.8040/2017
W.P.(C) No. 1822/2017 & CM No.8042/2017
W.P.(C) No. 1823/2017 & CM No.8044/2017
W.P.(C) No. 1824/2017 & CM No.8046/2017
W.P.(C) No. 1825/2017 & CM No.8048/2017

W.P.(C) No. 1826/2017 & CM No.8050/2017
W.P.(C) No. 1827/2017 & CM No.8052/2017
W.P.(C) No. 1828/2017 & CM No.8054/2017
W.P.(C) No. 1829/2017 & CM No.8056/2017
W.P.(C) No. 1830/2017 & CM No.8058/2017
W.P.(C) No. 1831/2017 & CM No.8060/2017
W.P.(C) No. 1832/2017 & CM No.8062/2017
W.P.(C) No. 1833/2017 & CM No.8064/2017
W.P.(C) No. 1834/2017 & CM No.8066/2017
W.P.(C) No. 1835/2017 & CM No.8068/2017
W.P.(C) No. 1836/2017 & CM No.8070/2017
W.P.(C) No. 1837/2017 & CM No.8072/2017
W.P.(C) No. 1838/2017 & CM No.8074/2017
W.P.(C) No. 1839/2017 & CM No.8076/2017
W.P.(C) No. 1840/2017 & CM No.8078/2017
W.P.(C) No. 1841/2017 & CM No.8080/2017
W.P.(C) No. 1842/2017 & CM No.8082/2017
W.P.(C) No. 1843/2017 & CM No.8084/2017
W.P.(C) No. 1844/2017 & CM No.8086/2017
W.P.(C) No. 1845/2017 & CM No.8088/2017
W.P.(C) No. 1846/2017 & CM No.8090/2017

3. Issue notice. Mr. Shadan Farasat, Advocate accepts notice on behalf of the Revenue.

4. With the consent of the parties, these matters are taken up for hearing.

5. The grievance of the petitioner in all these cases is that the contracts which it entered into with BSES Yamuna Power Ltd., BSES Rajdhani Power Ltd., Delhi International Airport Ltd. (for short "DIAL") and North Delhi Power Ltd. (for short "NDPL") for supply design, manufacturing, erection and commissioning of electrical systems, could not have been taxed under the Delhi Value Added Tax Act, 2004 (for short "DVAT Act") - given these were the subject matter of inter State sale and import under Section 5(2) of the Central Sales Tax Act, 1946 (for short "CST Act"). The period pertains to assessment years 2007-08 and 2008-09. The assessee/ petitioner had entered into specific contracts with each of the parties for the supply of said electrical systems. Upon default assessments made by the DVAT Authorities, the petitioner preferred appeals to the Objection Hearing Authorities (for short "OHA") contending that the nature of the transactions was inter State sale and the movement of goods of import pursuant to distinct contracts which had spelt out different specifications.

The petitioner relied upon Sections 3(a) and 3(b) and 5(2) of the CST Act. It was contended inter alia that the payments were directly linked to the erection and installation and not to local sales as to attract DVAT. The petitioner's appeals to the Special Commissioner (OHA) were rejected. The petitioner had relied upon a Division Bench ruling of this Court in *ABB Limited Vs. The Commissioner, Delhi Value Added Tax 194 (2012) DLT 97 (DB)*.

6. The OHA rejected the submissions made by the petitioner/appellant inter alia recording as follows:-

> *"11. It is noteworthy that the items supplied by the objector against these three companies are such which are not consumer specific and specifications could be common to many other operators involved into similar business. Perusal of the contract documents also indicates that the responsibility of the supplier was extended upto fabrication, installation and operationalization of equipments. In case of any damage or loss of property the supplier has been made responsible. The Ld. Assessing Authority has rightly held that the items were handed over to the beneficiary at site after installation and commissioning. The clauses for inspection are quite different from the provisions made in case of DMRC. The list of suppliers as provided by DMRC in cited case has not been shown in respect of other three contractee organizations. It has been noted that the items supplied are not such that only the contractee organizations could have utilized and thus there was feasibility for diversion. It is further added that in the case of DMRC drawings & certification were provided by DMRC in respect of their purchases. No such arrangement were found to have been provided to objector in case of sales made to NDPL, BSES and DIAL thereby indicating that privity of contract between the supplier and the user is not firmly established. The contractee in these cases had not been specified the suppliers and objector had not been specifically asked to make the procurements from outstation suppliers. Possibility of diversion of goods cannot be overruled in such eventuality. Goods dispatched on behalf of ABB were also found to be received after inter-State movement by ABB itself which was responsible for insurance and security at site till operationalisation. Therefore, the inter-State sales were for all practical purposes from ABB to ABB and the goods passed on to the final user at the time of execution of works contract.*
>
> *xxxx xxxx xxxx*

13. The final conclusion is that these transactions also did not satisfy the conditions highlighted by the Hon'ble High Court of Delhi in the case of objector dealer for the DMRC related transactions for the period of 2005-06. Obviously the facts cited above are not individually determinative or decisive, but the net conclusion, which emerges on taking a holistic view by appreciation of all ingredients, is that the requirements of Section 3 of CST Act are not satisfied in respect of these transaction. It can be clearly inferred that the objector dealer of CST Act in respect of works contract executed for vendors other than DMRC since the sales do not qualify as such. Hence disallowance of the exemptions on the interstate sale/import is upheld and the contention of the objector dealer that the present case is covered by the cited judgments is not found sustainable.

I4. Certain transit sales were also made by the objector dealer for NDPL/ BSES. The contentions of the counsel that these were in pursuance of the contract with the NDPL was examined. It was observed that delivery of the goods was taken by the objector dealer itself and transit sale transaction was not complete as property in goods was effected by transfer of documents of title while the goods were not in transit. It was already predetermined that the goods wee to be transferred to NDPL/BSES. Hence the transfer of goods by transfer of documents was predetermined and not effected in course of transit. In ase of works contract the title of goods passes as and when goods are used in works contract. Section 3(b) of the CST Act provides for passing of property in goods by transfer of document of title of the goods while the goods are in transit from one state to another, unless the property in goods passes by transfer of document of title to the goods, provisions of section 3(b) cannot be applied. The conditions are not satisfied in this case. In view of the above the rejection of exemption by the AA is upheld on this account."

7. The petitioners' appeals to the DVAT Tribunal are pending. However, in its applications for waiver of the pre-deposit condition which is premised upon the Division Bench's ruling of this Court – and which was affirmed by the Supreme Court in Commissioner, Delhi Value Added Tax Vs. ABB Limited (2016) 6 SCC 791, the Tribunal held that the matter required closer examination and on that premise granted relief to the extent that the petitioner was permitted to deposit 20% of the tax and interest demand and 10% of the penalty amount – the aggregate of which works out to ₹2.91 crores in all these cases. The DVAT Tribunal prima facie observed as follows:-

"23. After hearing both the counsel we have considered the record of the case including the rival submissions, grounds of appeal, default assessment orders, orders passed by the OHA and the decisions cited this Tribunal is of the considered view that the point raised for consideration can only be meticulously examined on the basis of documents and evidence to be produced when the matter is heard on merits. Moreover, the provisions of section 76(4) of the Act cannot be termed as undue hardship or irreparable loss to the appellant. Accordingly considering the submissions made by the Ld Counsel for Revenue as well as law and procedure which require entertainment of the appeals on merits being not an absolute right of the appellant but always subject to the fulfilment of the condition to be prescribed under section 76(4) of the DVAT Act, this Tribunal is of the view that the appellant at this stage is required a direction to deposit 20% of the amount in dispute of tax and interest and 10% of the amount in dispute of the penalties which is consequential in nature, rounded off to the nearest tenth digit, as precondition for hearing the appeals on merits within a period of 30 days. Orders passed accordingly. The applications stand disposed of. On compliance of the orders the file be listed for hearing on 01.03.2017."

8. It is contended by the petitioner that there is no radical difference between the transactions that were the subject matter in the previous ruling and the present case, save and except its customers are different. It is also highlighted that these cases involve three different types of transactions, all of which fall within the scope of 'inter State sale', defined under the Central Sales Tax Act. It is submitted that the first kind of transaction is a movement of goods, appropriated to the contracts by the petitioners which it manufactures, from other parts of the country but which ultimately are used for its customers purposes in the latter's premises – this falls under Section 3(a) of CST Act. The second kind of transaction is covered by Section 3(b) of CST Act i.e. bought out items strictly in accordance with the specifications, used for erection and installation purposes and the goods are imported again for the purpose of fulfilling the contractual obligations – subjected to Section 5(2) of CST Act. In that sense, there is no difference between the nature of the transactions in this case and those dealt with in the judgment of this Court. The petitioner had entered into contracts with DMRC in the previous reported decision.

9. Counsel for the revenue on the other hand argued that there are important differences in the nature of the transactions and the scope of the contracts. He highlighted the observations of the OHA that the goods

can well be used for purposes other than they were contracted for by the petitioner on the one hand and its customer's i.e. L & T (on behalf of DIAL), BSES Yamuna Power Ltd. and NDPL. In these circumstances, the DVAT Tribunal acted within jurisdiction while directing deposit of a portion of the tax liability. Learned counsel highlighted that substantial relief has been given to the petitioner by the Tribunal. It is further submitted that a substantial amount involved (i.e. `8,00,00,000/-) is in respect of high seas sales, which were never the subject of the Division Bench's ruling, that was ultimately affirmed by the Supreme Court.

10. This Court has considered the submissions. The Supreme Court in ABB Limited (supra) noted nature of the transaction between the petitioners. The relevant portion of the same is as under:-

"17. The aforesaid conclusion leading to our concurrence with the views of the High Court is also based upon the salient facts, particularly the various conditions in the contract and other related covenants between DMRC and the respondent which have been spelt out in paragraph 31 of the High Court judgment (ABB Ltd. Vs. Commr., 2012), enumerated and described as follows: (ABB Ltd. case, SCC OnLine Del)

"(1) Specifications were spelt out by DMRC;

(2) Suppliers of the goods were approved by the DMRC;

(3) Pre-inspection of goods was mandated;

(4) The goods were custom made, for use by DMRC in its project;

(5) Excise duty and Customs duty exemptions were given, specifically to the goods, because of a perceived public interest, and its need by DMRC;

(6) The Project Authority Certificate issued by DMRC the name of the subcontractors as well as the equipment/goods to be supplied by them were expressly stipulated;

(7) DMRC issued a Certificate certifying its approval of foreign suppliers located in Italy, Germany, Korea etc. from whom the goods were to be procured.

(8) Packed goods were especially marked as meant for DMRC's use in its project."

Before us there was no attempt to assail the aforesaid features and to even remotely suggest any factual error on the part of the High Court in noting those features.

> *18. The salient features flowing out as conditions in the contract and the entire conspectus of law on the issues as notice earlier, leave us with no option but to hold that the movement of goods by way of imports or by way of inter-state trade in this case was in pursuance of the conditions and/or as an incident of the contract between the assessee and DMRC. The goods were of specific quality and description for being used in the works contract awarded on turnkey basis to the assessee and there was no possibility of such goods being diverted by the assessee for any other purpose. Hence the law laid down in K.G. Khosla & Co. (P) Ltd. v. CCT, AIR 1966 SC 1216 has rightly been applied to this case by the High Court. We find no reasons to take a different view."*

11. The Revenue is undoubtedly correct in submitting that the DVAT Tribunal has granted significant relief to the petitioners. At the same time, the Court notices that the declaration of law by the Supreme Court was in respect of almost the nature of the transactions as in this case; they do not prima facie differ from the facts that led to the judgment of the Division Bench (as endorsed by the Supreme Court). No significant material particulars were shown to distinguish the two cases.

12. In the circumstances, this Court is of the opinion that the impugned orders to the extent that they direct the petitioners to deposit 20% of the tax and interest demanded and 10% penalty assessed cannot be sustained. They are accordingly set aside. The Court was informed during the hearing that the DVAT Tribunal, which is seized of the appeals, is likely to hear them on 01.03.2017. In the light of the modifications directed, the DVAT Tribunal shall proceed to hear the appeals on merits and render its decision preferably within three months from today. All rights and contentions of the parties are reserved; nothing stated in this order shall preclude the rights of the parties to urge all contentions. All the petitions are allowed in the above terms. All the petitions and the pending applications are disposed off.

13. A copy of this order be given *dasti* to the parties under the signatures of the Court Master.

[2017] 55 DSTC 44 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. Wadhwa, Member (J) and Diwan Chand, Member (A)]

Appeal Nos.178/ATVAT/16-17

Schwing Stetter India Pvt. Ltd.
19-Okhla Industrial Estate, Phase-III,
New Delhi-110020. ... Appellant

Versus

Commissioner of Trade &Taxes, Delhi. ... Respondent

Date of Order: 16 December, 2016

ENTRIES IN SCHEDULE – SELF-LOADING CONCRETE MIXER, WHICH MANUFACTURE AND READY MIX CONCRETE IS A MACHINERY USED FOR CONSTRUCTION WORK HENCE IT IS COVERED BY ENTRY 86 (XVI) OF THIRD SCHEDULE OF THE DVAT,. ACT.

WHEN THERE IS A COMPETITION BETWEEN A SPECIFIC ENTRY AND A RESIDUARY ENTRY, THE SPECIFIC ENTRY SHALL PREVAIL.

Brief Facts of the case

The appellant dealer filed a Determination Application u/s 84 of the DVAT Act for determination of the following question:

"What will be the rate of tax payable on the sale of Self Loading Mixer (SLM) and classification of said goods whether falls under Entry 86(xvi) of the 3rd Schedule under DVAT Act?

The Commissioner rejected the application without giving any reasoning whatsoever and simply stated that the SLM used for manufacturing and delivery of RMC is not covered under Entry 86(xvi) of the DVAT Act and hence is taxable u/s 4 (1)(e) of the DVAT Act @ 12.5%. Aggrieved by the order the appellant filed the appeal before the Tribunal.

Held

Bare perusal of these orders proves beyond doubt that it is an order passed without any reasoning. Despite directions in the past by this Tribunal as well as by Hon'ble High Court to the departmental authorities that while passing the quasi-judicial orders, reasons should be given, departmental

authorities are paying no heed to these directions. Though it has been admitted by the Ld. Commissioner while passing the impugned order that Self Loading Mixer is used for manufacturing and delivery of RMC, even then it has not been held to be machinery used for construction work. No reason has been given why it has not been held to be machinery used for construction work rather it is bereft of any reasoning. We agree with appellant's Ld. Counsel in this regard that on this ground only the impugned orders passed by the Commissioner are liable to be set aside.

Tribunal came to the irresistible conclusion that machinery i.e, Self Loading Concrete Mixer, which manufacture and deliver ready mix concrete and manufactured and traded by the dealer, is a machinery used for construction work, hence it is covered by under Entry 86(xvi) of the 3rd Schedule under DVAT Act.

Present for the Appellant : Shri Vivek Sharma, Advocate

Present for the Respondent : Shri C. M. Sharma, Advocate

Order

1. The appellant M/s Schwing Stetter India Pvt. Ltd. has filed instant appeal against determination order NO.F.387/CDVAT/2016/434 dated 24.05.2016 passed by Ld. Commissioner vide which he rejected the determination application filed by the appellant u/s 84 of the Delhi Value Added Tax Act (in short DVAT Act).

2. The brief facts of the present appeal are that appellant is engaged in the manufacture and trading of construction machinery. For the aforesaid purpose the appellant is registered as a dealer under DVAT Act vide TIN No.07560234225. The appellant is a wholly owned subsidiary of a foreign holding company namely M/s. Schwing GmbH, Germany. The appellant is presently engaged in the manufacturing of Concrete Handling Equipment such as Batching Plants, Concrete Pumps, Concrete Mixers and Recycling Plants in India.

3. One of the products manufactured by the appellant is a new line of machine called Self Loading .Mobile Concrete Mixer (SLM) which is having multi-functional activity. The appellant manufactures two models - SLM 4000 (with a capacity of 4 Tones) and SLM 2200 (with a capacity of 2 Tones). The machine has the capacity of self-loading various ingredients such as aggregate, sand, cement and water and mix the same in the drum mounted on the equipment to make RMC. It can then carry the mixed concrete to the point of use and discharge the concrete on the ground

or any other delivery equipment. It consists of a fully integrated and specifically designed chassis, a hydraulic engine for its operation and a cabin with operating controls including gear box, axle, steering and breaking systems.

4. The following are the characteristic features of the machine:

(a) A chassis in which the self-loading function and concrete mixer function are integrally connected and fully integrated.

(b) The controls for propulsion of the said self-loader and mixer are present in the cabin of the machine. In other words, self-loader and the mixer are controlled by the operator from the cabin.

(c) One engine which powers both the movement of the vehicle as well as the concrete mixer, which is integrally connected with the chassis..

5. The self-loader is designed in such a way that the functioning of Loader, drum support frame and water pump system which are part of mixer remain with the chassis. This clearly shows that the machine cannot be dismantled from the chassis nor can the chassis be used for any other purpose. This also shows that the extent of integration of machine and chassis is total and complete. The machine is meant for movement in limited space within the construction site. It can move at a maximum speed of 25-30 km/hour depending upon the model.

6. In this regard appellant filed a Determination Application u/s 84 of the DVAT Act for determination of the following question:

> Question: What will be the rate of tax payable on above said machinery i.e, sale of Self Loading Mixer (SLM) and the classification of said goods whether falls under Entry 86 (xvi) of the 3rd Schedule under DVAT Act?

7. According .to appellant's Ld. Counsel, the Ld. Commissioner vide impugned order dated 24.05.2016 rejected the application without giving any reasoning whatsoever and has simply stated that the SLM used for manufacturing and delivery of RMC is not covered under Entry 86 (xvi) of the DVAT Act and henceis taxable uls 4 (1)(e) of the DVAT Act @ 12.5%.

8. Aggrieved by the impugned order, the appellant has filed present appeal before this Tribunal on the following grounds and submissions which are independent and without prejudice to each other.

(i) According to appellant the present issue settled in favour of the appellant by the Determination Order passed by Ld. Commissioner, Chhattisgarh.

(ii) The impugned order has been passed without any reasoning and thus is liable to be set aside.

(iii) The Self Loading Mixer is a machinery used for construction work, hence it is covered under Entry 86 (xvi) of Third Schedule of DVAT Act.

(iv) It has also been assailed on the ground that where there is a specific entry and residuary entry, the specific entry shall prevail.

9. On the basis of above facts and grounds of appeal and submissions made by the appellant's Ld. Counsel during the course of arguments, appellant has prayed that the impugned determination order dated 24.05.2016 passed by the Ld. Commissioner be set aside and present appeal be allowed.

10. Heard to appellant's Ld. Counsel Shri Vivek Sharma and Shri C.M. Sharma on behalf of Revenue and perused file and case laws cited on the basis of which present appeal is being disposed off as follows .

11. Opening his arguments, appellant's Ld. Counsel Shri Vivek Sharma vehemently argued that impugned order dated 24.05.2016 passed by Ld. Commissioner is liable to be set aside. According to appellant the Self Loading Mixer is liable to VAT @ 5% as it is machinery used for construction work. Drawing attention of the Tribunal towards specific entry given in Schedule Third of DVAT Act, he submitted that Entry 86 (xvi) refers to the "Machinery for construction works". It is not disputed that SLM falls in the definition of capital goods'. The SLM manufactured by the appellant, self-loads the aggregate, cement etc. and mixes the same to make concrete, This concrete is used for construction work. Given this, the SLM, which is a machine and is used for construction work is covered under the above entry.

12. Appellant's Ld. Counsel further submitted that identical question of law came before the Ld. Commissioner, Commercial Tax, Chhattisgarh who vide order dated 17.06.2016 held that SLM is a machine used in execution of civil works contract and road construction and was liable to VAT @ 5%. Appellant also filed copy of Determination Order dated 17.06.2016 (Annexure-5) passed in the matter of Ajax Fiori Engineering Pvt. Ltd.

and submitted that identical question of law was decided in favour of the appellant by the Ld. Commissioner, Chhattisgarh. So the issue stands settled on the classification of self-loading mixer. So this Determination Order also be followed in the present appeal and impugned determination order dated 24.05.2016, which has been assailed in this appeal, be set aside as it is contrary to law.

13. The impugned determination order dated 24.05.2016 has also been assailed on the ground "that this order has been passed without any reasoning and hence liable to be set aside. In this regard Ld. Counsel submitted that it is well-settled law that valid reasoning is the bed rock of any order. "However, in the present appeal impugned order, which had been assailed, has not given any basis or any reason whatsoever to decide the matter against the appellant. It is a well-settled principle of law that non-speaking, cryptic, devoid of reason orders are void-ab-inltio and liable to be set aside.

14. Appellant's Ld. Counsel further submitted that it can be seen that impugned order does not give any reason to establish that SLM is not machinery for construction works. Therefore the impugned order being bereft of any reasoning, whatsoever, is incorrect in law and liable to be set aside on this ground itself. It is axiomatic that while passing the impugned order Ld. Commissioner has held that SLM is used for manufacturing and delivery of RMC. Even then the impugned order could not have lost sight of the fact that the SLM, being a machine, and which is used for construction work, is required to be levied tax @ 5%. So on this ground also impugned order is required to be set aside and present appeal be allowed.

15. The third ground on which impugned order dated 24.05.2016 passed by Ld. Commissioner has been assailed is that product Self Loading Mixer manufactured by appellant is a machinery used for construction work, so it is liable to be taxed @ 5% as being covered under Entry 86 (xvl) of Third Schedule of DVAT Act.

16. Appellant's Ld. Counsel further submitted that SLM is capable to self load the necessary ingredients, mix them to make concrete. transport and discharge the concrete at the construction works, be it civil construction, roads, dams etc. It is used for quick and accurate mixing of cement concrete at the site of construction. The SLM has capability to quickly and accurately weigh as the loading arm moves and load into the mixer drum, ingredients like coarse aggregate, sand and cement for concrete mix. It has the facility to draw measured quantum of water required for the concrete from its own water tank. Hence, the differentiating feature of the SLM is that it eliminates

manual labour for loading of ingredients and also ensures consistent mix ratio and quality for the concrete mix. The end product i.e. Ready Mix Concrete (RMC) is a major input used in civil construction works like construction of building, roads, bridges, canals etc. He further submitted that SLM is used exclusively for the manufacture of RMC, which is used for construction works. Hence SLM is rightly classifiable under Entry 86 (xvi) of the Third Schedule as “Machinery for Construction Works”.

17. Appellant’s Ld. Counsel also drew attention of the Tribunal towards an Article titled “Everything you need to know about Self Loading Concrete Mixer (Annexure-6) by Edward Allen to give thrust to his arguments that SLM is a machinery used for construction .work. In support of his arguments appellant’s Ld. Counsel has also filed a copy of Article titled “How Cement Mixers work” by Eric Baxter as Anrexure-7 to bring home the point that product manufactured by appellant i.e. Self Loading Mixer is classifiable under “Machinery for Construction Works”, as given in Third Schedule in Entry 86 (xvi) of DVAT Act.

18. Appellant’s Ld. Counsel further submitted that machine’s essential function is mixing the required inputs in proper proportion and not for transporting the ready mix concrete. The mixing takes place at the site of use of the concrete and therefore the need for transportation is limited to very short distance. So he submitted that both based on design features and the essential functions, the goods in question are rightly classifiable under “Machinery for Construction Works”.

19. He further submitted that the Self-Loading Concrete Mixer is mounted on a vehicle chassis to facilitate movement to the site of use. While there is no lorry chassis used for integrating the concrete mixer, the base used for so integrating is essentially a specially designed frame which takes the place of chassis. The frame or the chassis and the concrete mixing element are specially designed for each other and are so integrated that the chassis cannot be separately used from any other purpose.

20. Further elaborating his arguments appellant’s Ld. Counsel submitted that the chassis Is not purchased separately for mounting tile concrete mixer on it. The chassis also does not have any independent use other than the purpose of being integrated with the mixer. The so called chassis is actually manufactured by the appellant by using a frame completely designed by them, such that the frame or the chassis cannot be used for .purposes other than integrating a concrete mixer component with it.

21. In support of his arguments appellant’s Ld. Counsel placed reliance on (the recent decision of the Hon’ble Gujrat High Court in State of Gujrat

vs. Yantraman Automac Pvt Ltd. (2016) VIL 369 (Gujrat). In the above case the assessee used various equipment like Loaders, Track Excavators, Vibratory Compactors and Cranes in the execution of works contract. The assessee contended that the same are classifiable under Entry 35 of the Gujrat Value Added Tax Act, 2003 which provide for "Machinery including parts and accessories thereof used in the execution of works contract".

22. However, the Assessing Officer was of the view that the equipment were in the nature of motor vehicles and hence would fall under the Residuary Entry but Hon'ble Gujrat High Court decided the matter in favour of the assessee.

23. Placing reliance on the ratio of the above case, appellant's Ld. Counsel submitted that facts of the present case are similar to those in the judgment cited above. SLM is another equipment which is used in construction works and hence classifiable under Entry 86 (xvi), hence impugned order is liable to be set aside on this ground also.

24. He further submitted that the machine in question is , essentially a concrete mixer with the mobility being subsidiary to its main function of concrete mixing. The principal function of the machine is that of producing concrete by self loading. This makes it essentially a concrete mixer which is used for construction works. That fact that it can additionally carry the said concrete within the limited areas such as a construction site does not change its essential character i.e. of being a concrete mixer used for construction works. The function of mobility is at best a subsidiary feature. However, without the essential function of mixing concrete, the said goods do not provide any other utility to the user of the machine.

25. During the course of arguments appellant Ld. Counsel also placed reliance on the judgment of Hon'ble Madras High Court in the case of State of Madras vs Marshall Sons & Company (India) Ltd (Tax Revision Case NO.236 of 1953). In the said . case, the assessee was in the business of selling agricultural tractors and was paying Sales Tax @ 3%. However, the department contended that the agricultural tractor is a "motor vehicle" and therefore the assessee was liable to pay additional tax of 6% as per section 3(2)(i) of the Madras General Sales Tax Act, 1939.

26. Hon'ble High Court upheld the Tribunal's finding that in an agricultural tractor though the propulsion is by a motor, it is not a vehicle because it is not a thing which is employed to carry either persons or goods on land.

27. In further support of his arguments appellant's Ld. Counsel also referred to the judgment in the case of Sanghvi Motors Ltd., Vs. CC

(2008) 223 ELT 641 (Ahmedabad Tribunal) and referred to the following observations of the Hon'ble Tribunal:

> *"In our considered view, the product in question is primarily meant of work as a crane. Mobility is an additional advantage and the same is provided by the motor vehicle chassis, which has formed the base for the crane".*

28. Appellant's Ld. Counsel submitted that examples of other machinery used for construction are excavator, loader, backhoe, compactor roller, motor grader, mobile crane, dozer, fork lift truck etc most of which are mobile in addition to the major function carried out by them. The feature of limited mobility within the construction site cannot be taken as a basis to hold that the same would not come under the category of "Machinery for Construction Works".

29. In support of his arguments appellant Ld. Counsel also referred to the (judgment of Hon'ble Bombay High Court in the case of Commissioner of Sales Tax vs. Godrej & Boyce Manufacturing Co. Pvt. Ltd. (1977) 39 STC 418 (Bombay).

30. Appellant's Ld. Counsel further submitted that Ld. Additional Commissioner, Authority for Advance Rulings (Central Excise, Customs & Service Tax) in appellant's own case decided that the machine is classifiable under the Tariff Item 84743110, i.e. "Concrete Mixers". The Commissioner observed that the frame or the chassis and the concrete mixing element are specially designed for each other and are so integrated that the chassis cannot .be separately used for any other purpose.

31. Appellant's Ld. Counsel further submitted that in the light of above submissions, it can be concluded that the essential function of SLM is the manufacture of Ready Mix Concrete which is, in turn, used for construction of civil works, hence impugned order classifying the same under Residuary Entry is absolutely incorrect and liable to be set aside.

32. The last ground on which the impugned order dated 24.05.2016 has been assailed is that competition is between a specific entry and the residuary entry. The specific entry is required to prevail. In this regard appellant's Ld. Counsel further submitted that impugned order is not legally justified in classifying the Self-Loading Mixer under the Residuary Entry under section 4 (I)(e) of DVAT Act and taxable @ 12.5% when there is specific Entry 86 (xvi) under Third Schedule of DVAT Act. In this regard he placed reliance on the judgment of Hon'ble Apex Court in the case

of State of Maharashtra Vs. Bardama of India Ltd. (2005) 140 STC 17 and submitted that resort has to be had to the residuary entry only when a liberal construction by the specific heading cannot cover the goods in question.

33. He also placed reliance on the judgment of Mauri Yeast India Pvt. Ltd. Vs. State of U.P. (2008) 14 VST 259 (SC), Bharat Forge & Press Industries Pvt. Ltd. Vs CCE (1990) 1 SCC 532, Hindustan Poles Corporation vs: CCE (2006) . 145 STC 625 and judgment of Hon'ble Kerala High Court in the case of Kevi Hardwares Vs. State of Kerala (2003) 2 KLT 776.

34. During the course of arguments appellant's Ld. Counsel also quoted provisions of section 4(1)(e) of DVAT Act and submitted that only on those goods tax @ 12.5 paise in the rupee can be lived which are not covered under any specific entry.

35. Lastly closing his arguments he further submitted that in any case even if the product is conceivably classifiable both under Entry 86 (xvi) of Third Schedule as also Residuary Entry in section 4 (l)(e), benefit should be given to the appellant and therefore product be classified under Entry 86 (xvi) of Schedule Third of DVAT Act. This view has been expressed by Hon'ble Apex Court in the latest case of Mauri Yeast India Pvt Ltd vs State of U.P. in which case Hon'ble Supreme Court held that -

''It is now a well-settled principle of law that when two views are possible, one which favours the assessee should be adopted".

36. On the basis of above facts and ground of appeal and submissions made by the appellant's Ld. Counsel, it has been prayed that impugned determination order dated 24.05.2016 passed by Ld. Commissioner be set aside and present appeal be allowed.

37. While Ld. Counsel for the Revenue contended that Self Loading Mobile Concrete Mixers being manufactured and traded by appellant were in the nature of motor vehicle. They were registered as motor vehicle under the Motor Vehicles Act, so they could not be treated as machines for construction work. Impugned determination order dated 24.05.2016 passed by Ld. Commissioner placing them under Residuary Entry and taxing under section 4 (l)(e) of the DVAT Act @ 12.5% was as per law and deserves no interference hence appeal be dismissed.

38. The short controversy in the present appeal is whether the impugned order dated 24.05.2016 passed by Ld. Commissioner rejecting

the determination application moved under section 84 of the DVAT Act placing the machinery called "Self Loading Mixer" under the Residuary Entry, is correct or whether it should have been placed under Entry 86 (xvi) of 3rd Schedule as claimed by the appellant?

39. As is clear from the above discussion that appellant has challenged the impugned order dated 24.05.201.6 on various grounds.

40. The first ground on which the impugned order has been assailed is that in the similar circumstances in the case of Ajax Fiori Engineering Pvt.·Ltd. vs. Commissioner, Chhatisgarh, Commissioner, Chhatisgarh vide his order dated 17.06.2016 Commissioner, Chhatisgarh held that the same machine i.e. Self Loading Mixer (SLM) is a machine used in execution of works contract and road construction, hence liable to VAT @ 5%, hence this order should be followed and impugned determination order be set aside as it is contrary to law.

41. We have gone through the orders passed by Ld. Commissioner, Raipur. Though this order is not binding on this Tribunal but reasoning given by the Ld. Commissioner while passing these orders is also relevant for the disposal of this appeal. Secondly, in so far as Chhatisgarh VAT is concerned, the Self Loading Mixer has already been placed by the legislature under the category of machines used for civil construction work and road construction work and taxed @5%. On the contrary, under the DVAT Act, this machine has not been specifically placed under Entry 86 (xvi) of 3rd Schedule of DVAT Act but as function of this machinery is same, so ratio of this order is rightly applicable to the facts and circumstances of present appeal. It would be fruitful to reproduce the following observations by the Ld. Commissioner, Chhatisgarh in the above matter:

इस प्रकार आवेदक द्वारा विक्रय किये जाने वाला मशीन का कार्य producing, transporting and unloading the concrete material for using of it in the civil construction works like construction of road, bridges, canal, cheak dams, urban infrastructures, buildings, railways, tunnels, concrete roads, canal linings etc. है. इसका कोई अन्य उपयोग नही होता है. इस मशीनरी का पंजीयन mobile वाहन के साथ in built है. इसे चेसिस से प्रथक नही किया जा सकता है अतएव यह पूर्णतः सिविल कंस्ट्रक्शन के उपयोग में आने वाली मोबाइल मशीनरी है. अतः सेल्फ लोडिंग मोबाइल कंक्रीट मिक्सर मशीनरी अधिसूचना क्रमांक F.10/10/2013/CT/V(12) दिनांक 20.08.2013. एवं क्रमांक F.10/40/2014/CT/V(34) दिनांक 04.03.2014 में सिविल वर्क्स कॉन्ट्रैक्ट एवं रोड़ निर्माण में एकमात्र प्रयुक्त (Exclusively used) होने वाली मशीन एवं उपकरण होने से कर की दर 5 प्रतिशत अवधारित की जाती है."

42. It would be appropriate to reproduce Entry 86 (xvi) of 3rd Schedule, which is as follows:

Schedule III - Entry 86 : Capital Goods as specified below:

(xvi) "Machinery for Construction Work"

43. It is not disputed as argued by appellant's Ld. Counsel that SLM falls in the definition of capital goods. It is also not disputed that it is a machine. It is only used for construction work. It has got limited use of mobility. The main function of this machine is to produce ready mix concrete which is a major input used in civil construction work like construction of buildings, roads, bridges, canals etc.

44. We agree with the arguments of appellant's Ld. Counsel that in the facts and circumstances of the present appeal, ratio of the determination order passed by Ld. Commissioner, Chhatisgarh is applicable in the present appeal also.

45. The second ground on which impugned order dated 24.05.2016 passed by Ld. Commissioner has been assailed is that impugned order is a non-speaking order. It is cryptic and mechanically passed. It would be appropriate to reproduce the operative part of the impugned order before giving any finding on this point, which is as follows:

"I have heard both the sides and gone through the documents available on record and of the view that the product under consideration Self Loading Mixer used for manufacturing and delivery of RMC is not covered under sub entry xvi of Entry 86 of the DVAT Act 2004 as machinery for construction and hence is taxable u/s 4 (1)(e) of the DVAT Act 2004 @ 12.5%;"

46. Bare perusal of these orders prove beyond doubt that it is an order passed without any reasoning. Despite directions in past by this Tribunal as well as by Hon'ble High Court to the departmental authorities that while passing the quasi-judicial orders, reasons should be given, departmental authorities are paying no heed, to these directions. Though it has been admitted by the Ld. Commissioner while passing the impugned order that Self Loading Mixture is used for manufacturing and delivery of RMC even then it has been held that it is not machinery used for construction work. No reason has been given why it has not been held to be machinery used for construction work rather it is bereft of any reasoning. We agree with appellant's Ld. Counsel in this regard that on this ground only the impugned orders passed by Ld. Commissioner are liable to be set aside. Appellant's Ld. Counsel in support of this argument cited various decisions S.N. Mukherjee Vs. Union of India AIR 1990 SC1984, Steel Authority of

India Limited Vs. Sales Tax Officer (2008) 16 VST 182 (SC), ratio of these cases also applies to present appeal.

47. The next important question to be decided bythis Tribunal is whether the product manufactured by appellant i.e. Self Loading Concrete Mixer is machinery used for construction work or it is simply a motor vehicle which, is compulsorily registered under the Motor Vehicle Act as argued oy Revenue's Ld Counsel? For this purpose we have to see what is the main function of this machinery? It is capable to self-load necessary lngredients such as aggregate sand and cement for preparing concrete mix and then mix them to make concrete and transport it at the place of construction site. So additional use of mobility cannot place it in the category of motor vehicle. Even if we apply the common parlance test, then we find that the people who deal in construction work would place it in the category of "Machinery for construction work". Even a common man would not prefer to use it for transportation of person or goods. The purpose of this machinery is to eliminate manual labour and prepare concrete . mixer using the right quantity of ingredients and water quickly and accurately and the end product produced by this machinery i.e. ready mix concrete being a major input used in civil construction work like construction of buildings, roads; bridges etc., it can safely be placed under the machinery used for construction work so classifiable under Entry 86 (xvi) of Third Schedule and liable to tax @ 5%.

48. Before proceeding further, it would be appropriate to reproduce the following observations of Hon'ble Gujrat High Court in the case of State of Gujrat Vs. Yanatraman Automac Pvt. Ltd (supra), ratio of this judgment applies to the facts and circumstances of the present case:

> *"The main question therefore, arises is whether these machines being motor vehicles, would be covered by residuary entry. The fact that these vehicles are motor vehicles and were registered or compulsorily registerable under the Motor Vehicles Act is not dispute. However, in our opinion, this would be of no consequence. Entry 35, we may recall, pertains to machinery including parts and accessories thereat used in the execution of the works contract. Admittedly, there is no separate entry for motor vehicles. Therefore, when a question arises where certain equipment is a machinery which is used in the execution of the works contract, the fact that it also happens to be a motor vehicle, would be wholly insignificant. In other words, if an equipment satisfies description of being a machinery used in execution of works contract, the fact that it also happens to be a motor vehicle, would not change this fundamental*

feature which would be sufficient to bring the equipment within the purview of entry 35. In absence of any specific entry pertaining to motor vehicle, merely because a certain equipment satisfies description of being a motor vehicle, in addition to being a machinery used in execution of works contract cannot carry it to the residuary clause".

49. On the basis of above observations, it can safely be concluded that Self Loading Mixer machinery in question is also a machinery used in construction work. The fact that it also happens to be motor vehicle would not change its basic quality and use which is production of concrete mix which is used in the construction of roads etc.

50. In our considered view the ratio of judgment in the case of State of Madras Vs. Marshall Sons & Co. (India) Ltd. (supra) also applies in the present case in which Hon'ble High Court upheld the Tribunal's finding that in agricultural tractor though the propulsion is by a motor, it is not a vehicle because it is not a thing which is employed to carry either persons or goods on land. The Hon'ble High Court while passing the orders held as follows:

"Taking the dictionary meaning of "vehicle" it cannot be doubted that it means a conveyance or a carriage. An agricultural tractor is not used to convey anything and it is employed for agricultural operations and is driven by a driver. It is therefore impossible to accept the contention on behalf of the Government that an agricultural tractor is a vehicle and therefore is subject to the levy of additional tax of 6 pies."

51. Similarly the judgment of Hon'ble Bombay High Court in the case of Commissioner of Sales Tax Vs. Godrej & Boyce Manufacturing Co. Pvt. Ltd. is also applicable in the present circumstances where the Hon'ble High Court held that electric powered fork-lift truck, which is primarily used for moving goods vertically for the purpose of stacking them with a view to economize space and which is capable of travelling at an extremely limited speed, cannot be regarded as a motor vehicle falling under Entry 58 of Schedule-C of the Bombay Sales Tax Act, 1959.

52. If we apply the ratio of above case to the present appeal, we find that the main function of Self Loading Machine is to manufacture concrete mixture and because mixer drum is placed on the chassis, it is also used for transportation. Its speed is very slow and this machine is placed at the construction site and for a limited mobility it is also moved from one

place to another as per requirement. We agree with the arguments of the appellant's Ld. Counsel that this machine's essential function is mixing the required inputs in proper proportion and not for transporting the ready mix concrete. The mixing takes place at the site of use of the concrete and therefore the need for transportation is limited to very short distance. So based on design features and essential function, the machinery in question is rightly classifiable under "Machinery for Construction Works" because chassis and concrete mixing, element are specifically designed for each other and so integrated that chassis cannot be separately used for any other purpose. So in our considered view machinery in question is essentially concrete mixer and the mobility of this machine is subsidiary function to its main function of concrete mixing. The concrete mixer is produced by this machine by self loading. The fact that it can additionally move within the limited areas such as construction site does not change its essential feature.

53. Ld. Additional Commissioner, Authority for Advance Rulings (Central Excise, Customs & Service Tax) also placed this machinery under the Tariff Item 84743110 which relates to concrete mixture. While passing the order the Ld. Commissioner rightly observed that frame or the chassis and the concrete mixing element are specifically designed for each other and so integrated that chassis cannot be separately used for any other purpose.

54. .The ratio of the judgment in the case of Sanghvi Motors Ltd. Vs. CC (supra) is also applicable to the facts and circumstances of present appeal.

55. On the basis of foregoing discussion we are of the considered view that main function of machinery is manufacture of concrete mixer and movement of this machinery is a secondary function to the main function.

56. The last ground on which the impugned order dated 24.05.2016 has been assailed by the appellant is that when there is a competition between a specific entry and residuary entry, the specific entry shall prevail. We are in consonance with these arguments. Time and again Hon'ble Supreme Court and different High Courts have held that resort to residuary entry can be made only when an item is not covered under a specific entry even by a liberal interpretation. Appellant's Ld. Counsel during the course of arguments referred to the judgment of Hon'ble Supreme Court in the case of State of Maharashtra Vs. Hardama of India Ltd. (supra) in which Hon'ble Supreme Court held as follows:

> *"Both Tribunal and the High Court commonly enunciated the principle that a specific entry would override the general entry. In*

addition we would add, as has been held in Collector ofCentral Excise Vs. WoodCraft Products Ltd. (1995) 3 SCC 454/ 462/ resort has to be had to the residuary entry only when a liberal construction by the specific heading cannot cover the goods in question."

57. In this regard, it would not be out of place to quote the following observations of the Hon'ble Apex Court in the judgment of Mauri Yeast India Pvt Ltd. Vs. State of U.P. (supra), which are as follows:

"It is now a well-settled principle of law that in interpreting different entries attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so recourse to the residuary entry should be taken by way of last resort".

58. In the facts and circumstances of the present appeal the judgment in the case of Bharat Forge & Press Industries Pvt. Ltd. Vs. CCE (supra) is also applicable.

59. Before giving finding that when there is a conflict between a specific entry and the residuary entry, specific entry shall prevail, it would be appropriate to quote the following observations of the full bench of Hon'ble Kerala High Court in the case of Kevi Hardwares Vs. State of Kerala (supra), referred by appellant's Ld. Counsel during the course of arguments, which are as follows:

"Under the Act the taxable event is the sale or purchase of goods. The levy of sales tax is normally not dependent on the 'use' of the goods. It is not unknown that an item can be used for different purposes. When a particular item is specifically mentioned under a specific entry, the mere fact that the article can be used for another purpose as well, would not mean that the specific entry can be ignored and that tax can be levied on the basis of a general entry. When the Legislature has clearly included a particular commodity under an entry and prescribed the rate of tax, the court is entitled to assume that the legislative intent was to levy tax at the rate as prescribed under the specific entry and not under any other provision. The principle of 'generalia specialibus non-derogent' : is clearly attracted in such a situation. It is an accepted norm for the interpretation of a statue that 'the special over-rides the general. It promotes justice. It avoids uncertainty".

60. In this reganI, we accept the arguments of appellant's Ld. Counsel that it is now a well-settled principle of law that when two views are possible, one which favours the assesse should be adopted.

61. On the basis of foregoing discussion and the case law referred by appellant's Ld. Counsel, we come to the irresistible conclusion that machinery in question i.e. Self-Loading Concrete Mixer, which manufacture and deliver ready mix concrete and manufactured and traded by appellant, is a machinery used for construction work, hence it is covered by Entry 86 (xvi) of Third Schedule of DVAT Act and taxable accordingly and it is not classifiable as goods under the residuary entry as held by the Ld. Commissioner in the impugned order dated 24.05.2016. Hence, impugned determination order dated 24.05.2016 passed by Ld. Commissioner is hereby set aside and present appeal is allowed.

62. Order pronounced in the open court.

63. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

64. File be consigned to record room.

[2017] 55 DSTC 59 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. Wadhwa, Member (J) and Diwan Chand, Member (A)]

Appeal No.02-03/ATVAT/16-17

S.K. Industries
C-1090, DSIDC Indl. Area,
Narela, Delhi ... Appellant

Versus

Commissioner of Trade &Taxes, Delhi. ... Respondent

Date of Order: 9 November, 2016

PENALTY – PENALTY U/S 33 READ WITH SECTION 86(9) OF THE DVAT ACT AND U/S 9(2) OF CENTRAL SALES TAX ACT FOR LATE FILING OF RETURNS – REASONABLE CAUSE – RETURNS WERE FILED LATE SINCE THE DATA WAS MIXED UP BY COUNSEL'S DEALING ASSISTANT WITH OTHER DATA. TRIBUNAL REDUCED THE AMOUNT OF PENALTY OF RS.10, 000/- TO RS. 1,000/- UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.

Brief Facts of the case

The dealer filed the prescribed returns for the First Quarter of 2013-14. The returns were filed late since the data which was handed over to the

consultant in time but data was got mixed up by the assistant of the counsel with other data. The Ld. VATO imposed penalty u/s 33 read with section 86(9) of the DVAT Act and u/s 9(2) of the CST Act to the tune of Rs.l0,000/- under each Act .,for late filing of returns by 135days. The Objections was filed against the orders of the VATO before the Special Commissioner who upheld the penalty. Being aggrieved the Orders passed by the OHA the present appeals were filed before the Tribunal.

ORDER

1. These appeals have been filed against the impugned order dated 08.03.2016 passed by Ld. Special Commissioner, hereinafter called Objection Hearing Authority (in short OHA) who vide this order upheld the penalty order dated 02.09.2014 passed u/s 33 read with section 86 (9) of the DVAT Act and u/s 9 (2) of Central Sales Tax Act (in short DST Act) imposing penalty of Rs. 10,000/- in each Act by Ld. VATO.

2. Factual matrix of these appeals is that appellant is engaged in the business of manufacturing and trading of auto accessories. Appellant filed all his returns within time as prescribed under the DVAT Act as well as under the CST Act and never made any default in compliance of department's order. The appellant is a registered dealer of Ward-71 having TIN No.07280307517. A penalty of Rs.10,000/- has been imposed under the DVAT as well as under the Central Sales Tax Act (in short CST Act) vide order dated 02.09.2014 by Ld. VATO for late filing of returns for 1st Quarter of 2013-14. The reason for late filing of the return was that data was handed over to the consultant in time but that data was got mixed up by counsel's dealing assistant with other data. Therefore the return could not be filed in time.

3. Appellant filed objections against the penalty order passed by Ld. VATO which were rejected by Ld. OHA vide impugned order dated 08.03.2016 which has been assailed before this Tribunal on following grounds:

(i) Because Ld. OHA has failed to appreciate that the assessing Authority has passed an ex-parte order and ex-parte order is no order in the eyes of law.

(ii) Because Ld. OHA has failed to appreciate that appellant cannot be punished for fault of the clerk of the consultant for submitting late returns despite the fact that appellant handed over the data to the consultant within time.

(iii) Because Ld. OHA has erred in law and on facts that penalty procedure is automatic and it is quasi criminal in nature and without giving any opportunity to the dealer imposed penalty. Lower authorities have failed to appreciate that there is no revenue loss to the department due to non filing of return as objector has no liability to pay tax under the DVAT Act or under the CST Act.

(iv) That Ld. VATO has no authority to impose penalty u/s 86 (9) of the DVAT Act and section 9(2) of the CST Act as no default assessment u/s 32 of DVAT Act has been passed before the order of penalty u/s 33 of DVAT Act.

(v) Because Ld. OHA has failed to consider the judgment of Hon'ble High Court in the case of A.K. Woolen Industries and judgment of this Tribunal in the case of Garg Electronics case.

(vi) Because at any rate penalty for late filing of return under CST Act could have not been imposed because Ld. VATO has no authority to impose penalty u/s 9(2) of DVAT Act for late filing of returns.

(vii) Because Ld. VATO could have imposed penalty u/s 86 (9) of DVAT Act only if a dealer failed to furnish any return under Chapter V of DVAT Act. The central return has been prescribed in Form-1 by virtue of Rule 3 of Central Sales Tax (Delhi) Rules, 2005.

(viii) Because non-filing of retrun in Form-1 under CST Act is an offence u/s 11 of Central Sales Tax (Delhi) Rules, 2005 and punishable with fine which may extend to five hundred rupees and when the offence is continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues. On the basis of above facts and grounds of appeal it has been prayed that impugned order dated 08.03.2016 be set aside and present appeals be allowed.

4. Heard to appellant Ld. Counsel Shri R.K. Aggarwal and Shri Pradeep Tara on behalf of Revenue and perused the file on the basis of which these appeals are being disposed off as follows.

5. As is clear from the above facts that these appeals pertain to 1st quarter of 2013-14. Ld. VATO vide order dated 02.09.2014 imposed penalty u/s 33 read with section 86 (9) of DVAT Act and u/s 9 (2) of CST Act read with section 86 (9) of DVAT Act to the tune of Rs.10,000/- under each Act for late filing of return by 135 days. The short controversy which we have

to decide is whether penalty was rightly imposed by Ld. VATO which was upheld by Ld. OHA? If yes, then whether in the facts and circumstances of the present appeals, the amount of penalty imposed by Ld. VATO was reasonable? In this regard, it would be appropriate to reproduce section 86 (9) of the DVAT Act, which is as follows:

Section 86(9)- Penalty

"If a person required to furnish a return under Chapter V or to comply with a requirement in a notification issued under section 70 of this Act-

(a) Fails to furnish any return by the due date: or

(b) Fails to furnish with a return any other document that is required to be furnished with the return or

(c) Being required to revise a return already furnished, fails to furnish the revised return by the due date: or

(d) Fails to comply with a requirement in a notification issued under section 70;

The person shall be liable to pay, by way of penalty, a sum of five hundred rupees per day from the day immediately following the due date until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed fifty thousand rupees".

6. It is clear from the bare perusal of this provision that if returns are filed late, penalty of Rs.500j- per day immediately following the due date until the failure is rectified shall be .imposed and this amount of penalty shall not exceed Rs.50,000/- as is provided in the proviso to this section. It is also clear from this provision that no exception whatsoever has been incorporated in the language of this provision even if no tax liability arises. So in our considered view penalty was rightly imposed.

7. Now question arises whether in the facts and circumstances of the present appeals penalty amount is justifiable. Appellant has taken the ground for late filing of return that he had handed over in time the data to the consultant but Ld. Counsel's dealing assistant mixed up the data with other data due to which return could not be filed in time. As is clear

from the fact that returns were filed late by 135 days. Ld. OHA had not deemed it to be a justifiable ground. According to Ld. OHA retrieving of mixed data should not have taken more than 10 days if sincere efforts were made. We agree with the reasoning given by Ld. OHA that had sincere efforts had been made, at least there would not have been delay of 135 days. However, in the facts and circumstances of the present case ends of justice would be achieved if this amount of penalty of Rs. 10,000/- is reduced to Rs.1,000/- under each Act. Accordingly present appeals are partly allowed. Appellant is directed to deposit this amount within a period of 30 days. It would not be out of place to mention that amount deposited by appellant in compliance of order passed ujs 76 (4) of DVAT Act would be adjusted against this penalty amount.

8. Order pronounced in the open court.

9. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

10. File be consigned to record room.

[2017] 55 DSTC 63 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. Wadhwa, Member (J) and Diwan Chand, Member (A)]

Appeal No.78/ATVAT/16-17

Baba Metal & Company ... Appellant
2217 M, Bagichi Raghu Nath,
Sadar Bazar, Delhi-110006

Versus

Commissioner of Trade &Taxes, Delhi. ... Respondent

Date of Order: 29 August, 2016

CANCELLATION OF REGISTRATION – VALIDITY OF REGISTRATION OF THE DEALER UNDER SECTION 22 OF THE DELHI VALUE ADDED TAX ACT-2004 CANCELLED WITH RETROSPECTIVE EFFECT ON THE GROUND "THE DEALER FOUND INVOLVED IN EVASION OF TAX BY MAKING PURCHASES SUSPICIOUS/ BOGUS DEALERS"?

SERVICE OF NOTICE – RULE 16(4) PROVIDES THAT IT SHOULD BE SERVED IN THE MANNER PRESCRIBED IN RULE 62 OF THE DVAT RULES.

POWERS OF THE OHA UNDER THE DVAT ACT – WHETHER THE OHA EMPOWERED TO REJECT THE OBJECTIONS ON NEW GROUNDS?

Brief Facts of the case

The appellant is registered with Department of Trade & Taxes since 2005 and has been filing the prescribed return truly and correctly and had claims of refund pending under the Delhi Value Added Tax Act. The dealer came to know from computerized system devised by the Department of Trade & Taxes that Form DVAT-11 has been issued on 16-01-2016 by the Ld. AVATO cancelling Registration Certificate w.e.f. 01-04-2012 on the ground " The dealer found involved in evasion of tax by making purchases suspicious/ bogus dealers". Show cause notice in DVAT10 was placed on the dealer's login.

Aggrieved by the cancellation of registration by the Ld. AVATO, the appellant filed the objections before the Ld. OHA. The Ld. OHA called the AVATO's report about the functioning of the dealer who file a report dated 23-03-2016 stating that he visited the dealer's premises two times but the shop/business premises of the dealer found closed. On the date fixed for hearing on 23-03-2016 asked the counsel to file written submissions on the next date of hearing i.e. 28-03-2016. When the counsel went to file the written submission on 28-03-2016 he was informed that the objection has been disallowed. The dealer after login also found from the DVAT site that the Ld. OHA issued a notice for hearing under section 74 dated 26-03-2016 which was Saturday and the Department was closed.

Aggrieved by the order the appellant filed the appeal before the Tribunal.

Held

Revenue has failed to justify as what happened in the intervening period between 18-11-2015 and 16-01-206 when the date of hearing was fixed on 23-011-2015 and order of cancellation was passed on 16-01-2016.

It is clear from the Rule 62 that notice by electronic mail can be sent only when the Commissioner is satisfied that office building of the dealer is not known to exist or is not traceable, then only the officer may, by order in writing dispense with the requirement of notice under the proviso. Hence under the circumstances notice was not served in the prescribed manner as given in Rule 62. The cancellation of the registration is contrary to law because registration has been cancelled with retrospective effect.

The appeal allowed with directions to the concerned VATO/AVATO to restore appellant's registration from the date of cancellation.

Present for the Appellant : Shri Gurdeep Singh, Advocate.

Present for the Respondent : Shri S.B. Jain, Advocate

Order

1. The present appeal has been filed challenging the impugned order dated 26.03.2016 passed by Ld. Objection Hearing Authority (in short OHA) who vide this order upheld the cancellation of registration order dated. 16.01.2016 passed by Ld. AVATO.

2. The brief facts of the present appeal are that appellant is registered with Department of Trade & Taxes and engaged in the business of wholesale trading of metal since 2005. The Appellant has been filing returns truly and correctly under the Delhi Value Added Tax Act (in short DVAT Act) and had claims of refund pending with department to the tune of rupees five lakhs,

3. The dealer came to know from the computerized system devised by the Department of Trade & Taxes that form DVAT-11 has been issued on 16.01.2016 by the Ld. AVATO cancelling Registration Certificate of the Appellant with effect from 01.04.2012 stating the reasons as under:

"The dealer found involved in the suspicious/bogus dealers. The many of dealers of 2A are cancelled. I am satisfied that dealer is involved in evasion of tax by making purchases bogus/suspicious dealer".

4. It also reveals from DVAT site that show Cause notice in DVAT 10 was placed on the dealer's login stating as follows:-

"Please take a note that in the event of your failure to comply with this notice, your registration would stand cancelled with effect from 18.11.2015 without any further notice in this regard."

5. The dealer aggrieved by the cancellation of registration order passed by Ld. AVATO, filed objections before the Ld. OHA. The Ld. OHA called the AVATO's report about the functioning of the dealer. The Ld. AVATO filed a mischievous report dated 23.03.2016 stating that he visited the dealer's premises two times but shop/business premises of the dealer found closed.

6. That on 23.03.2016 the OHA pretended to be busy in attending meeting and counsel was asked to file written submissions on the next working day i.e, 28.03.2016.

7. That on 28.03.2016 the counsel of the dealer went to file written submission and was informed that the objection has been disallowed. The dealer also found on the DVAT site after dealer login that the Ld. OHA issued a notice for hearing under section 74 dated 26.03.2016 at 11:30 a.m. It is noted that 26.03.2016 was Saturday on which day department was closed.

8. Hence appellant has filed present appeal against the impugned order dated 26.03.2016 on the following, among other grounds:—

(i) Because the Ld. OHA has erred grievously in rejecting the objections without giving due weight and consideration to the facts and circumstances of the case without affording the proper opportunity to the appellant to put his arguments, thus the order is bad in law.

(ii) Because DVAT-10 alleged to have been issued found pasted at the system only and thus neither signed nor served, issued to the dealer was illegal.

(iii) Because without prejudice, DVAT-10 stated RC to be cancelled with effect from 18.11.2015 while DVAT-11 stated RC cancelled with effect from 01.04.2012.

(iv) Because Ld. OHA has not considered at all the grounds of DVAT-10 or DVAT-I1 and has passed the orders on different footings without affording any opportunity to the dealer at all.

(v) That Ld. OHA issued a notice asking the dealer to appear on 26.03.2016 at 11.30 a.m. even when he was knowing that it would be impossible for the dealer or his counsel to appear even if they come by air and that was also a Saturday on which day department remains closed.

(vi) Because the dealer has never been confronted with any of the documents if any recorded which enabled the AVATO to come to the conclusion that the' dealer found involved in the suspicious bogus dealer.

(vii) Because it is well settled principle of law that order by a quasi judicial authority should also be a reasoned order.

On the basis of above facts and ground of appeal, it has been prayed that impugned orders passed by the Ld. AVATO as well as Ld. OHA, be set aside and present appeal be allowed directing the concerned AVATO to restore the registration of appellant with effect from the date of cancellation.

9. Heard to appellant's Ld. Counsel Shri Gurdeep Singh and Shri S.B. Jain on behalf of Revenue and perusal the record on the basis of which this appeal is being disposed off as follows -

10. Section 22 of the DVAT Act provides grounds on which registration of a dealer may be cancelled. This provision also provide that the Commissioner may, after service of a notice in the prescribed form and after providing the dealer an opportunity of being heard, cancel the registration of the dealer with effect from the date specified by him in the notice. Notice in DVAT-l0 is given before cancellation of registration. It is also provided in Rule 16 (4) of the DVAT Rules that it should be served in the manner prescribed in Rule 62. It would be proper to reproduce Rule 16 (4) of the DVAT Rules, which is as follows:-

"Where the Commissioner proposes to cancel the registration of a dealer under sub-section (1) of section 22, the Commissioner shall serve upon the person a notice in Form DVAT-l0 in the manner prescribed in Rule 62".

11. In the present case, according to appellant, notice in DVAT-l0 was placed on the dealer's login on the DVAT site. The copy of DVAT-l0 notice dated 18.11.2015 has been filed by the appellant, Perusal of this notice shows that it is dated 18.11.2015 and in this notice appellant had been directed to appear before the AVATO to show cause why his registration should not be 'cancelled on 23.11.2015. The order vide which (DVAT-l1) registration has been cancelled is dated 16.01.2016 and vide this not-ice, registration has been cancelled retrospectively with effect from 01.04.2012. Revenue side has failed to justify the intervening period between 18.11.2015 and 16.01.2016 as to what happened in this period when date of hearing was fixed on 23.11.2015 and order of cancellation was passed on 16.01.2016. Appellant has challenged the cancellation on the ground that no notice in DVAT-10 was served on him in the manner prescribed in Rule 62 of the DVAT Rules. So it would be appropriate to reproduce Rule 62 (1) of the DVAT Rules, which is relevant for the disposal of this appeal.

Rule 62 - "Without prejudice to the provisions of section 96 and 97, notices of summons or orders (in this rule called a 'document') under

the Act or these rules may be served by any of the following methods, namely:-

(i) By delivering or tendering to the addressee or his agent or to a person regularly employed by him in connection with the business in respect of which he is registered or to any adult member of tits family, a copy of the notice, summons or order,

(ii) By post:

PROVIDED that if upon an attempt having been made to serve any such notice or summons or order by any of the above mentioned method, the Commissioner is satisfied that the addressee is evading service of notice, summons or orders or that for any other reasons, the notice, summons or order cannot be served by any of the above mentioned methods, the Commissioner shall cause such notice or summons or orders to be served by affixing a copy thereof-

(a) If the addressee is a dealer, upon some conspicuous part of any place of the dealer's business last notified by the dealer of if the said place of business is known not to exist or is not traceable, upon some conspicuous part of the last known place of residence of its proprietor or partner or director or trustee or manager or authorized signatory, or any other person authorized to receive notice on behalf of the dealer;

(b) If the addressee is not a dealer, on some conspicuous part of his residence or office or the building in which his residence or office is located;

And such service shall be as effectual as if it has been on the addressee personally:

PROVIDED FURTHER that where the Commissioner at whose instance the notice or summons or order is to be served, on inquiry, is satisfied that the said office/ building/ place of residence is known not to exist or is not traceable/he may, by order in writing/ dispense with the requirement of service of the notice or summons or order under the preceding provision;

(iii) by sending the document by facsimile;

(iv) By sending the document by electronic mail;

(v) By sending the document by courier, or

(vi) In such other manner as the Commissioner thinks fit."

12. It is clear from the above provision that notice by electronic mail can be sent only when the Commissioner is satisfied that office building or place of residence of the dealer is not known to exist or is not traceable, then only he may, by' order in writing dispense with the requirement of notice under the preceding proviso. Revenue has not provided any evidence to prove that notice in DVAT-10 was personally served on the appellant or it was sent by post. So notice in the present case in DVAT-10 Form shown on DVAT site was not properly served. Secondly, vide this notice appellant was directed to appear on 23.11.2015 and it was also mentioned in the notice that if appellant fail to appear on 23.11.2015, registration will be cancelled from 18.11.2015 itself, the date of notice. So in our view in these circumstances notice was not served in the prescribed manner as given in Rule 62.

13. Cancellation of registration has also been assailed on the ground that reason for cancellation, as given in cancellation order, is that appellant is a bogus dealer but no evidence to prove this fact has been given by the revenue side nor appellant was given opportunity to confront.

14. In this regard we agree with the argument of appellant's Ld. Counsel that before cancellation, appellant should have been given an opportunity of hearing after service of notice and cancellation of registration is also contrary .to law because registration has been cancelled retrospectively from 01.04.2012. Hon'ble Delhi High Court. In the case of Chabra Electric Stores Vs. The Chief Commissioner, Delhi (1972) 30 STC 85, while considering section 7 (7) of Bengal Finance Act; as extended to Delhi, held that scheme of the Act does not warrant the giving of retrospective effect to the order of cancellation of a registration certificate. This provision is *pari materia* to the provision as contained in section 22 (1) of the DVAT Act.

15. It would also be proper to reproduce the following para of the order of this Tribunal in the case of *M/s. Balkishan Gopal Dass Vs. Commissioner of Trade & Taxes,* New Delhi passed on 29.06.2011, relevant part of which is as follows:

> *"A careful perusal of section 22 (1) reproduced as above shows that Ld. Commissioner gets a jurisdiction to cancel the registration after the notice in the prescribed form, has been served upon the dealer and dealer has been provided an opportunity of hearing. When action of the Commissioner canceling the registration is challenged then it is for the Commissioner to establish that a notice in the prescribed form was served before cancelling the registration and opportunity of hearing had also been given to the dealer. Thus,*

in the case before us, the onus was upon the Revenue to establish that the notice as required under section 22 (1) of the Act was in fact served upon the appellant."

16. Applying the ratio of above order to the facts of the present case, we find that in the present case also no proper notices were served upon the appellant before order of cancellation of registration and also no opportunity of hearing was given, which is also violation of principle of natural justice according to which no one can be condemned unheard.

17. Ld. OHA also confirmed the cancellation order passed by Ld, AVATO. It is axiomatic that Ld. AVATO without any evidence presuming appellant to be a bogus dealer, cancelled his registration retrospectively with effect from 01.04.2012 while Ld. OHA rejected the objections of the appellant on completely new ground. According to Ld. OHA, as per report dated 23.03.2016, AVATO, Ward-30, he visited the dealer's premises two times but shop/business premises of the dealer found closed. No business activities noticed. On local inquiry made from dealer of Bagichi Raghunath, Sadar Bazar, it is stated that mostly time the shop remains closed. No signboard found on the dealer's shop. Hence the objection is disallowed.

18. Now the Question arises whether on a new ground Ld. OHA was empowered to reject the objections. In our view, Ld. OHA was required to see whether appellant was a bogus dealer or not on which ground his registration was cancelled. Secondly, when registration was already cancelled by Ld. AVATO vide order dated 16.01.2016 with effect from 01.04.2012, how appellant can be expected to do business when his registration has already been cancelled by Ld. AVATO.

19. Ld. OHA's order has also been assailed on the ground that date of hearing was fixed on 26.03.2016, which was Saturday, on which day department remains closed. Then how appellant can appear before Ld. OHA vide notice dated 26.03.2016? The appellant was directed to appear on 26.03.2016 at 11.30 a.m. itself in the office which was also not possible for the appellant to appear on the same day at such a short notice. We agree with the arguments of the appellant's Ld. Counsel that proper opportunity of hearing is required to be given to the appellant before passing impugned order.

20. On the basis of foregoing discussion Ld. AVATO's order dated 16.01.2016 as well as Ld. OHA's order dated 26.03.2016 rejecting appellant's objections, are quashed and present appeal is allowed with the direction to the concerned VATO/AVATO to restore appellant's registration from the date of cancellation.

21. Order pronounced in the open court

22. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

23. File be consigned to record room.

[2017] 55 DSTC 71 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. Wadhwa, Member (J) and Diwan Chand, Member (A)]

APPEAL NO. 1154/ATVAT/13-14
Assessment Year: 2010 - 2011
(Default Assessment of Tax, Interest & penalty)

M/s Classic Tools ... Appellant
1/4, DSIDC Complex Phase - 1,
Nand Nagari,
New Delhi – 110093

Versus

Commissioner of Trade &Taxes, Delhi. ... Respondent

Date of Order: 23 June, 2017

CENTRAL SALES TAX – CONCESSIONAL RATE OF TAX AGAINST 'C' FORMS – PRODUCTION OF PROOF OF MOVEMENT OF GOODS – TRANSPORTATION OF GOODS IN ITS OWN VEHICLE SUPPORTED BY 'C' FORMS AND PAYMENT RECEIVED IS SUFFICIENT PROOF TO ACCEPT THE SAME.

Brief Facts of the case

The appellant dealer received some "C" Forms after the completion of assessment and produced the same before the OHA. The OHA rejected the claim with the observations "since the dealer has produced the "C" Forms but has not produced the basic and fundamental proof of movement of goods" hence the interstate sale is treated as local sale and objection filed by the dealer is rejected. Aggrieved by the order the appellant filed the appeal before the Tribunal.

Held

Since the Revenue has failed to bring any evidence on record discrediting the facts stated by the appellant and documents submitted in

support of his contention of having delivered the goods outside the State, in absence of any contrary evidence, we are of the view that rejection of the claim on the grounds that no GRs are available when the dealer has transported the goods in its own vehicle supported by the "C" form and payment received is sufficient proof to accept the same. The impugned orders set aside matter remanded back to VATO to reframe the assessment after affording an opportunity to the appellant.

Cases Referred:

1. *Kirloskar Electric Co. Ltd. Vs. CST (1992) 83 STC page 485*
2. *State of Andhra Pradesh Vs. Hyderabad Asbestos Cement Production Ltd. 1994 – (094) STC – 410 (SC)*

Present for the Appellant : Shri Kailash Hari, C.A.

Present for the Respondent : Shri Pradeep Tara, Advocate

Order

1. This order shall dispose of the above noted appeal filed against the impugned orders dated 06.01.2014 passed by the Ld Objection Hearing Authority (in short the OHA) who rejected the objections and upheld the orders of default assessment of tax and interest u/s 9(2) of the CST Act for the year 2010-11 passed by the VATO Ward-77 vide orders dated 21.11.2012 creating the following demand as the appellant had short C-Forms worth Rs 34,33,717/- :

A.Y.	Tax	Interest
2010-11	1,03,012/-	15,452/-

2. Default assessment was carried out by the VATO Ward-77 vide orders dated 21.11.2012 by observing that re-conciliation of DVAT-51 for the year 2010-11 and perusal of sale summary, trading account etc revealed the total interstate sale for Rs 82,58,253/- against which 'C' forms of Rs 48,59,664/- were submitted with DVAT-51 and as such allowed the exemption in respect of forms submitted and taxed the remaining interstate sale of Rs 34,33,717/- for which the 'C' Forms were missing. Such sale was taxed @ 3% with interest creating demand of Rs 1,18,464/- (Tax 1,03,012 + interest Rs 15,452/-).

3. As is noted from the impugned orders, during objection hearing appellant filed photocopies of six 'C' forms, alongwith details, copies of

bank statement and also produced original 'C' forms and bills and filed an affidavit. Appellant was also asked to file copies of RCs, petrol ledger, driver salary ledger. Appellant also filed before the OHA, a certificate from. his purchaser M/s Allied Nippon P Ltd , copy of RC, ledger copy, audited profit and loss account in support of his case.

4. Ld OHA rejected the claim of Appellant in respect of interstate sales by observing that "I have gone through the documents submitted by the dealer in support of the objections against default assessment u/s 9(2) of CST Act and have also heard the arguments of the Counsel whereupon I am of the considered view that since the dealer has received six C forms but has not produced the basic and fundamental proof of movement of goods. No GR from any authorized transport company has been received by the dealer. On the other hand some vague RC of vehicle No. DL 5CG 0861 in the name of Kunjumon KS was filed which had carried the goods. The evidence filed by the dealer for movement of goods is based upon the unreliable and make believe explanation. No link could be established between the vehicle and the business. Hence, the all interstate sale is treated as local sale and the objection filed by the objector is rejected and order of the authority below is upheld and confirmed."

5. Aggrieved by the impugned orders the appellant has filed the above noted appeal and assailed the impugned orders on following grounds:

1. That the order of the Ld. VATO is arbitrary, illegal and against the principle of natural justice.

2. That the appellant has received 6-C forms of Rs.30,29,867/- after the date of assessment and the same are in the possession of the appellant. These, were produced before the OHA but the claim has been rejected despite submission of the relevant documents and production of the record. Appellant has placed reliance on the decision of the Supreme Court of India in the case of Ravi Gupta Vs. CST Delhi & Anr. (DSTC 49 J 367 to 372) and of the Tribunal in the case of Larsen & Toubro Ltd. Vs. Commissioner, Trade & Taxes, Delhi (DSTC 49 J 252-255)

3. That the Ld. OHA has taken a negative view inspite of submission of all the directed papers, affidavit etc. and explanations submitted at the time of hearing before the OHA.

4. That the levy of interest of Rs.15,452/- be deleted as the appellant is very much confident to receive C-forms for Rs.4,03,850/- from Danblock Brakes Pvt. Ltd.

5. That the Ld. Assessing Authority has taxed sales of Rs.34,33,717/- @ 5% instead of 3% on account of non-production of C-form at the time of assessment.

6. We have heard Shri Kailash Hari, C.A. Ld. Counsel for appellant, Shri Pradeep Tara, Adv., Ld. Counsel for Revenue and have perused the material placed on record, grounds of appeal as well as the impugned orders carefully.

7. Ld. Counsel for appellant submitted that the appellant has received the C Forms which were placed before the Ld. OHA who rejected the same on account of non-filing of GRs. Further submissions made is that the appellant has yet to receive the C Forms worth Rs.4,03,850/-. That the appellant had submitted before the Ld OHA, Photocopy of RCs of two vehicles in the name of Mr. K.S. Kunjumon, husband of the proprietor of the firm and that there is no question of submission of GR as the delivery of dies has been taken by Allied Nippon Ltd. in their vehicles from appellant's factory and in case of H-One India Pvt. Ltd. and Danblock Brakes Pvt. Ltd., dies have been delivered to their factory by appellant in its own vehicles bearing registration number DL-5C-G-0861 and DL-2C-AK-6709. While rejecting the claim of the appellant, Ld OHA has not specified as to which type of link is to be established by the appellant between vehicle and the business. Further submitted that Photocopy of bank statement with Central bank of India, Savita Vihar, Delhi for the period from 01.04.2010 to 31.03.2011 showing receipt of all payments by cheque only from the customers namely, Allied Nippon Limited, A-12, Site-IV, Industrial Area, Sahibabad, Ghaziabad; H-One India Pvt. Ltd, Greater Naida (Gautam Budh Nagar); Danblock Brakes India Pvt. Ltd., Sonipat, Haryana as well as the sales bills were produced before the OHA.

8. Ld. Counsel for the Revenue submitted that the impugned orders suffer from no infirmity or illegality as the C Forms were rejected for want of GR. Appellant himself has stated that the goods were carried in the vehicle owned by the appellant or by the purchasers themselves in their vehicles. This shows that the delivery of the goods has been given at the counter and as such the inter-state movement had not been occasioned by virtue of sale and hence these are not the: inter-state sales and are local sales only and have been rightly taxed so.

9. In respect of sales made by Appellant to M/s Allied Nippon Ltd., appellant has himself stated that the purchasing dealer took the delivery of Dies from his factory and took to his own factory in Nelda in his own vehicle. The very fact that the delivery of the goods was taken in Delhi concludes

that there is no movement of goods occasioned in pursuance to the sale and hence there is no inter-state sale but the local sale which has been rightly taxed. So far as the case of making delivery in the vehicles owned by the appellant and there being no GR copy in such cases is concerned, Counsel for Revenue has failed to show us any provision in the Act or a decision that mandates that the movement of goods has to be only by a third party carrier and the appellant cannot deliver it in his private vehicles, specifically when the goods are to be transported to the nearby places. Appellant has submitted documentary evidence of the vehicle which is owned by the husband of the proprietor of the appellant firm in which the goods are stated to have been transported and delivered to the purchasing dealer outside the state. Appellant has also submitted that photocopies of audited profit and loss account for the year 2010-11 showing conveyance and travelling expenses of Rs 54365/- He has also filed an affidavit para 6,7, & 8 of which read as under;-

"6. That we manufacture and sell dies which are manufactured as per the order of specific customers and the same cannot be useful to any other customer. Moreover, dies are very delicate products which cannot be transported in heavy vehicles.

7. That in case of our following customers our product dies have been taken by it from our factory to its factory in its vehicle. Auto Nippon Ltd Sahibabad (Ghaziabad)

8. That in case of our following customers our product dies have been delivered by us to our customers in our following vehicles DL-5CG 0861, DL- 2 CAK 6709

H-one India P Ltd Greater Naida (Gautam Budh Nagar) Dan Block Brakes P Ltd (Sonipat) Haryana"

10. Revenue has failed to bring any evidence on record discrediting the facts stated by the appellant and the documents submitted in support of his contention of having delivered the goods outside the state. In the absence of any contrary evidence, we are of the view that the rejection of the claim on the grounds that no GRs are available when the appellant has transported the goods' in its own vehicle supported by the C Form and the payments received is sufficient proof to accept the same.

11. In view of the law laid down in the case of Mis Kirloskar & Asbestos the appellant is entitled to get concessional rate of tax in case hens able to produce the C forms even at the appellate stage. Their Lordships in the judgment in the case of Kirloskar Electric Co. Ltd. Vs CST (1992) 83 STC

page 485 had observed as under:

> *"The State is entitled to the tax which is legitimately due to it. When the Sales Tax Act provides that a deduction can be claimed in respect of sales affected in favour of Regd. Dealers then the deduction should be allowed. Even though the ST-I forms were produced after the assessment had been completed, it will not be fair or just not to allow the legitimate deduction. A citizen should be asked to pay only that amount of tax which is legitimately due from him."*

12. Further, in the judgment reported as State of Andhra Pradesh Vs. Hyderabad Asbestos Cement Production Ltd.:1994-(094) STC-410(SC), Their Lordships had observed as under:-

> *"Mere use of the words "the first assessing authority" in sub-rule (7) of rule 12 cannot and does not mean, in the context and scheme of the enactments concerned herein, that the appellate authorities do not have the power to receive form C in appeal. This power can of course be exercised only where sufficient cause is shown by the dealer for not filing them up to the time of assessment before the first assessing authority. If in a given case, a dealer had obtained further time from the first assessing authority and yet failed to produce them before him, it is obvious that the appellate authority would adopt a stiffer standard in judging the sufficient cause shown by the dealer for not producing them earlier. It is necessary to reiterate that receipt of those forms in appeal cannot be a matter of course; it should be allowed only where sufficient cause is established by the dealer for not producing them before the first assessing authority as contemplated by rule 12(7)."*

13. Consequently the impugned orders are set aside and the matter is remanded back to VATO to reframe the assessment after affording an opportunity to the appellant, taking on record the C Forms now available with the appellant and allow the credit for the same after due verification in accordance with legal position elaborated in foregoing para, for which the appellant shall appear before the VATO on 21.07.2016.

14. Order pronounced in the open court.

15. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 77 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. Wadhwa, Member (J) and Diwan Chand, Member (A)]

Appeal No.335-343/ATVAT/15-16

M/s Persys Punj Lloyd Joint Venture ... Appellant
B-7/5, LGF, Opposite Dear Park,
Safdarjung Enclave,
New Delhi-110029.

Versus

Commissioner of Trade &Taxes, Delhi. ... Respondent

Date of Order: 6 July, 2016

REFUND UNDER THE DVAT ACT, 2004 – EXCESS AMOUNT IN RETURN CLAIMED AS REFUND – LEGISLATIVE INTENT BEHIND PROVISION OF SECTION 38 – MANDATE OF SECTION 38 OF THE DVAT ACT – TO GRANT REFUND WITHIN ONE MONTH OF FILING MONTHLY RETURN.

LIMITATION FOR GRANT OF REFUND – REFUND DISALLOWED AFTER EXPIRY OF PERIOD FOR GRANT OF THE SAME UNDER SECTION 38 – THE DEALER FILED OBJECTION – OHA INSPITE OF BEING CONVINCED REMANDED THE MATTER – APPELLANT FILE APPEAL BEFORE TRIBUNAL

Facts

The appellant is registered with Department of Trade & Taxes and during assessment year2007-2008 filed the periodical returns. As the dealer had excess ITC at the time of filing of returns, claimed refund of the same under the DVAT Act for respective tax period. Refunds claimed were disallowed by passing ex-parte orders after expiry of limitation prescribed under Section 38 for grant of refund. Aggrieved by the assessment orders the Appellant filed objections before the Objection Hearing Authority. The Ld. OHA inspite of being convinced that the Assessment Orders are not legally tenable and does not stand scrutiny of law, instead of directing the VATO to issue refund remanded the matter for passing fresh assessment order. Being aggrieved by the impugned order the dealer filed the appeals before the Tribunal.

Held

On going through all the sub-sections of Section 38 of the DVAT Act, the legislative intent that is clearly discernible is that refunds must

be granted to a person entitled within the specific time period stipulated in sub-section (3) thereof. This intention is further fortified by a look at the provisions of sub-section (7) of section 38 which stipulates that for calculating the period prescribed in clause (a) sub-section (3), the time taken to furnish the security under sub-section (5) to the Commissioner or to furnish the additional information sought under Section 59 or to furnish returns under Sections 26 and 27,"shall' be excluded. It is apparent from the details placed by the appellant on record that though the returns were filed by him in time in the respective months, 2007-08 and first notice that the department claims to have issued under section 59(3) of the DVAT Act is issued on 4th January2011 while the mandate under section 38 of the Act is to grant the refund within two months of filing the returns. The VATO is directed to grant the refund to the appellant within a period of one month from the date of this order.

Present for the Appellant : Shri Ravi Chandhok, Advocate.

Present for the Respondent : Shri Pradeep Tara, Advocate

Order

1. This order shall dispose of the above noted appeals filed by the appellant M/s Persys Punj Lloyd Joint Venture challenging the orders dated 08.12.2015 passed by the Special Commissioner-II ,hereinafter called the Objection Hearing Authority (in short the OHA) whereby while setting aside the orders passed by the VATO, case has been remanded back with directions to pass fresh orders within a month time. Prior to that the Ld VATO vide orders dated 10.01.2011 passed in respect of different Assessment periods of .Year 2007-08 disallowed the refund claimed by the Appellant in the returns filed.

2,. Facts of the case briefly stated are that the Appellant M/s Persys Punj Lloyd Joint Venture is a joint venture of Persys SDN. BHD, a Malaysian company and Punj Lloyd Ltd. companies incorporated under the Malaysian Companies Act, 1965 and the Companies Act, 1956 respectively vide joint venture agreement dated October 10, 2003. The Company was registered under the Delhi Value Added Tax Act, 2004 vide TIN: 07713000534. Appellant filed during assessment year 2007-2008 periodical returns declaring turnover on account of works executed. Section 11 of the Delhi VAT Act provides that in case there is excess input tax credit after set-off against output Value Added Tax/Central Sales Tax liability, claimant dealer has option to either carry forward to next tax period or claim refund of the same in return filed under the Delhi VAT Act for respective tax period. As the JV had excess ITC at the time of filing the Returns, the Company

claimed refunds of the same as per under mentioned details:

Tax period	Acknowledgement date	Refund claimed
June 2007	06.07.2007	24,09,121
August 2007	01.10.2007	16/76,410
September- 2007	27.10.2007	5,52,000
October 2007	29.11.2007	13,89,619
November 2007	02.01.2008	14,54,360
December 2007	28.01.2008	8,00,919
January 2008	18.03.2008	9,00,952
February 2008	25.03.2008	8,26,395
March 2008	14.07.2008	15,25,319
Total		1,15,35,095

3. Appellant's case is that since the Refunds were not received by the JV, the Company enquired about the same from jurisdictional ward on different occasions and every time it was informed by ward officials that department is not issuing refunds on one pretext or the other. Subsequently when the counsel of the Company met the Value Added Tax Officer, Ward-62, Department of Trade & Taxes, New Delhi to know status of the Refunds, he was informed that the Refunds have been disallowed by passing *ex-parte* orders as the appellant did not respond to the notice 'dated January 4, 2011 issued under Section 59(3) of the Delhi VAT Act.

4. Aggrieved by the Assessment Orders the Appellant filed objections before Special Commissioner-II/Objection Hearing Authority, Department of Trade &Taxes, New Delhi.

5. The OHA vide order dated December 8, 2015 inspite of being convinced that the Assessment Orders are not legally tenable and does not stand scrutiny of law, instead of directing the VATO to issue refund remanded the matter for passing fresh assessment order.

6. Being aggrieved by the Impugned Order the Appellant has filed present appeals on the following grounds :-

1. That the Impugned Order is contrary to judicial discipline

2. That the issue involved in the instant case is squarely covered by judicial pronouncement of Hon'ble Delhi High Court in the

matter of Swam Darshan Impex (P) Ltd. Vs. Commissioner, Value Added Tax & ANR ((2010) 8 VSTI B-467 (Del.), which has been followed by this Hon'ble Tribunal. in Crane Control Equipments Vs. Commissioner of Trade &Taxes, Delhi in Appeal Nos. 397- 398/ ATV AT/14 -15.

3. The Assessment Orders are against provisions of Section 38 of the Delhi VAT Act, which provides that refund claimed by a dealer in monthly return shall be refunded within one month from date of filing of return for respective tax period. Further Section 38 of the Delhi VAT Act provides that, where a notice has been issued under Section 58 or 59 of the Delhi VAT Act, time taken to furnish information sought under the same shall be excluded for calculating period for issuing refund. Plain reading of Section 38 of the Delhi VAT Act gives understanding that notice prescribed thereof is required to be issued within one month from furnishing of return for relevant tax period. In case no notice has been issued, refund claimed by a dealer in return shall be issued within the said period i.e. one month from date of filing of return. Contention of the Appellant is also supported by the Judgments.

4. In the instant case it is evident from the Assessment Orders that the Notice alleged to have been issued, was Issued beyond limitation prescribed under Section 38 of the Delhi VAT Act.

5. The learned OHA erred in remanding the matter in as much as the learned OHA, inspite of being convinced that Assessment Orders are not legally tenable and are squarely covered by the Judgments has remanded the matter back to the learned VATO.

6. There are catena of judicial pronouncements wherein it has been held that when entire material required -for deciding an issue is available; authority concerned is precluded from remanding the matter. Reliance has been placed on the decision of Hon'ble Supreme Court in the matter of Madras Cements Ltd: Vs. CCE [2015 [(325) ELT 239 (SC).

7. The Impugned Order has been passed without application of mind. In the Impugned Order, the learned OHA has discussed the Judgments, which squarely applies to facts of the instant case. Contrary to the Judgments wherein the department

has been directed to issue refunds claimed alongwith interest, the learned OHA has remanded the matter for fresh adjudication.

8. In the Impugned Order, the learned OHA has mentioned that the Assessment Orders are against the Judgments, however instead of deciding the issue, the learned. OHA remanded the matter. It has been held in large number of judicial pronouncements that any order which is passed without application of mind is liable to be set aside. In this regard reliance is placed on judicial pronouncement of the Hon'ble Supreme Court in the case of Assistant Commissioner, Commercial Tax Department Vs. Shukla &Brothers [2010 (254) ELT 6 (SC)], relevant extracts of which are reproduced below: Further reliance is placed on the decisions of State of H.P. Vs. Sardara Singh [2008 (229) ELT 496 (SC)] and Travancore Rayons Ltd. Vs. UOI [1978 (2) ELT J378 (SC)]

9. In view of the above submissions the Appellant submits that the Impugned Order passed by the learned OHA is bad in facts and law and passed with biased mind is not maintainable and liable to be set aside.

10. Appellant has prayed that the impugned orders be set aside and the learned VATO be directed to issue the Refunds claimed in the Returns alongwith interest; or pass any other order or orders as deemed fit and proper in the circumstances of the case

7. We have heard Sh. Ravi Chandhok, Adv Ld Counsel for the Appellant and Sh Pradeep Tara, Adv., Ld Counsel for the Revenue.

8. The default assessment order passed by VATO in respect of tax period June 2007 extracted below explains the basis of rejecting the refund.

"Dealer had claimed refund through DVAT-16 for Rs 24,09,121/- for June 2007 month. Notice u/s 59(3) vide reference no. 10582 dated 04.01.2011 was issued to the dealer to furnish relevant documents by 07.01.2011. But the dealer failed to furnish documents viz., DVAT-30 & 31 , Tax Invoices/sale bills, GRs and Bank Statement etc. till 10.01.2011. In the absence of the above documents, the refund claimed cannot be established. Hence, the said refund is being disallowed. The dealer is hereby directed to pay an amount of Rs 0/- and furnish details of such payment in form DVAT 27A

alongwith proof of payment to the undersigned on or before 10.01.2011 for the following tax period...."

9. Ld OHA, noting the decision of the Hon'ble High Court in the case of M/s Swarn Darshan Impex and the decision of this Tribunal in M/s Crane Control Equipment and observing that the, orders of the Ld VATO would, not be sustained in a court of law remanded the matter back to the VATO to pass fresh orders and directed the appellant to appear before the VATO.

10. Grievance of the appellant is that in terms of provisions of the section 74 the Ld OHA ought to have accepted or rejected the objections and could not have remanded the matter back to the Ld VATO.

11. It is apposite to refer to the provisions relating to the grant of refund which are extracted hereunder:-

38 Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either -

(a) refunded to the person, -

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit Investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act. the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

(7) For calculating the period prescribed in clause (a) of subsection (3), the time taken to -

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27, or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.

(8) Notwithstanding anything contained in this section, where

(a) a registered dealer has sold goods to an unregistered person and

(b) the price charged for the goods. includes an amount of tax payable under this Act;

(c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section;

no amount shall be refunded to the dealer or may by applied by the dealer under clause (b) of sub-section (3) of this section unless the

Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

(9) Where -

(a) a registered dealer has sold goods to another registered dealer; and

(b) the price charged for the goods expressly includes an amount of tax payable under this Act, the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer. .

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

(11) Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.

39 Power to withhold refund in certain cases

(1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the, opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (1) of section 42 of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund.

12. Matter regarding grant of refund and the interpretation of the relevant provisions was the subject matter of decision in the case of M/s Swarn Darshan Impex case and the following observations of the jurisdictional High Court which are relevant for the decision of the case are extracted hereunder:-

"27. A plain reading of Section 38, which deals with refunds, makes it clear that by virtue of sub-section (3) thereof, in the case where a person is assessed quarterly, the refund is to be made to the dealer within two months after the date on which the return is furnished or the claim for the refund is made. Of course, it is the dealer's option to elect as to whether the refund is to be made in cash or the said amount is to be carried forward to the next tax period as a tax credit in that period. In the present case, the petitioner has elected for the grant of refunds in cash and. has not elected for carrying forward the refund amount to the next tax period. The provisions of Section 38(3) uses the expression "shall" and, therefore, it is clear that the refund has to be made within two months from the .date of the return.

13. In the said judgment the Hon'ble High Court has also further observed as under:-

9. Thus; whether a provision is mandatory or directory, has to be gathered from the real intention of the legislature and after examining the scope and purpose of the statute and no hard and fast rule can be laid down for such a determination. Consequently, the fact that the word "shall" as appearing in Section 74(7) was taken to be directory and not mandatory in Behl Construction (supra), does not ipso facto mean that the word "shall" as appearing in Section 38(1) and 38(3), also ought to be construed as being merely directory. The provisions of Section 74 and those of Section 38 operate in entirely different fields and deal with different situations. The legislative intent that is discernible in respect of Section 74(7), in the context of its related provisions, does not necessarily mean that the same legislative intent ought to be applied to the provisions of Section 38. In Behl Construction (supra), this court had observed that:-

> *"8. In sub-sections (8) and (9) of section 74, the legislature has provided for the situation where the commissioner does not dispose of the objections during the applicable period. This, in itself, is indicative of the fact that the legislature was mindful of such a situation and that the mere passage of*

the applicable period without the commissioner disposing the objections one way or the other did not mean that the objections could be deemed to have been accepted or allowed. For this to happen, something more is required and that is exactly what is stipulated in sub-sections (8) and (9). In sub-section (8) it is provided that where the Commissioner has not notified the objector of his decision within the, time specified, under subsection (7) (i.e., the applicable period), the objector may serve a written 'notice requiring him to make a decision within fifteen days. And, by virtue of sub-section (9), if the decision is not made by the end of the period of fifteen days after being given the notice referred to in subsection

(8), then, at the end of that period, the Commissioner shall be deemed to have allowed the objection. So, 'the deeming fiction or sub-section (9) gets triggered only if a notice as stipulated in sub-section (8) is given and the period of fifteen days specified therein expires without any decision from the commissioner. Not otherwise. This is the clear legislative intendment which we can gather upon a plain reading of the provisions of sub-sections (7), (8) and (9) of section 7 4 of the said Act."

10. Such a situation does not arise in the present case inasmuch as the provisions of Section 38 do not contemplate a situation where the Commissioner does not grant a refund within the stipulated period. The decision in Behl Construction (supra) was in the context of the provisions of Section 74 and those circumstances do not arise in the present case. As pointed out above, what this court has to determine is: what is the legislative intent behind the provisions of Section 387 It is this intent which shall determine whether the stipulations as to time are merely directory or they are mandatory as suggested by the use of the word "shall". On going through all the subsections of Section 38 of the said Act, the legislative intent that is clearly discernible is that refunds must be granted to a person entitled within the specific time period stipulated in sub-section (3) thereof.

This intention is further fortified by a look at the provisions of sub-section (7) of Section 38 which stipulates that for calculating the period prescribed in clause (a) of subsection (3), the time taken to furnish the security under sub-section (5) to the satisfaction of the Commissioner or to furnish the additional information sought under

Section 59 or to furnish returns under Sections 26 and 27, "shall be excluded". This provision as to exclusion of time taken in doing the aforesaid acts, is in itself an indication that the legislature was dead serious about the stipulation as to time for making refunds under Section 38 (3) of the said Act. For, if the legislative intent were not so, what was the need or necessity for providing for exclusion of time? Thus, not only do the provisions of Section 38 employ the word "shall", which is usual in mandatory provisions, the legislative intendment discernible from the said provisions also points towards the mandatory nature of the said provisions. Clearly, subject to the exclusion of time provided under sub-section (7) or Section 38, in a case falling under Section 38(3)(a)(ii), the refund has to be made within two months from the date of the return."

14. It is apparent from the details placed by the appellant on record that though the returns were filed by him in time in the respective months, 2007-2008 and the first notice that the department claims to have issued under section 59 (3) of the DVAT Act, 2004 is issued on 4th January 2011 while the mandate under section 38 of the Act is to grant the refund within two months of filing the return. Facts of the case are squarely covered by the decision of the Hon'ble High in the case of M/s Swarn Darshan Impex case and the appellant is entitled for the refund which has been withheld illegally as no action as contemplated in terms of provisions of section 38 of the DVAT Act had been taken within the time limit provided. In view of the facts and circumstances of the case, the Ld, VATO is directed to grant the refund to the appellant within a period of one month from the date of this order.

15. Order pronounced in the open court.

16. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 89 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mrs. Justice Pratibha M. Singh]

W P (C) Nos. 4816/2017

H. M. Sales Corporation. ... Petitioner

Versus

Commissioner of Trade & Taxes. ... Respondent

Date of Order: 31 July 2017

RECTIFICATION OF MISTAKE – SECTION 74B OF DVAT ACT, 2004 – MISTAKE COMMITTED IN THE RETURN FILED UNDER THE DVAT ACT, 2004 – THE PERIOD TO REVISE RETURN EXPIRED – SOUGHT RECTIFICATION UNDER SECTION 74B READ WITH RULE 36B – PURCHASES MADE AGAINST C - FORMS WERE BY MISTAKE INDICATED IN COLUMN INWARD STOCK TRANSFER AGAINST F - FORMS IN DVAT RETURN – MISTAKE APPEARS TO BE BONA FIDE – PETITIONER NOT ASKING FOR ANY EXTRA ORDINARY BENEFIT BUT ONLY WHAT IT IS ENTITLE TO IN ACCORDANCE WITH LAW. HELD: RETURN FILED BY PETITIONER IN QUESTION STAND RECTIFIED

Facts:

In return of first quarter of 2013 – 2014 inadvertently shown the purchases against C – forms in column of inward stock transfer against F forms, the period to revise the return expired, application for rectification of mistake filed which was not accepted by the revenue.

Held

The Court is of the view that the mistake explained by the Petitioner appears to be bona fide. Although it was open to the Petitioner to have revised the return, admittedly, the period of revising the return has already expired. With the Petitioner not asking for any extraordinary benefit but only what it is entitled to in accordance with law, the Court is of the view, the Petitioner should be permitted to rectify its return, even at this stage and its clarification that aforementioned figures of purchases made from Aman Marketing for the first quarter of 2013-14 should be treated as purchases made against C-Forms should be accepted. The return filed by the Petitioner for the first quarter of 2013-14 shall stand rectified accordingly. An appropriate order to this effect be passed by the VATO on the strength of this order, not later than two weeks from today and the Petitioner shall not later than one week thereafter be permitted to download the C-Form pertaining to the above transactions.

Present for the Petitioner : Mr. Rajesh Jain with Virag Tiwari, Advocates

Present for the Respondent : Mr. Satyakam, ASC, GNCTD with Ms. Manpreet, LA DTT.

Order

1. This is a petition by a registered dealer seeking a direction to the Respondent/Department, Commissioner of Trade and Taxes ('DTT'), rectifying the mistake committed by the Petitioner in the return filed under the Delhi Value Added Tax Act, 2004 ('DVAT Act') on 14th August, 2013 for the first quarter of 2013-14. The main prayer is that the Petitioner should be permitted to download the C-Form for the transactions worth Rs.1,79,44,191 which took place in the first quarter of 2013-14.

2. The Petitioner states that for the interstate purchases made from M/s Aman Marketing, a registered dealer in Kanpur, the Petitioner was charged 2% tax under Section 8(1) of Central Sales Tax Act, 1956 ('CST Act'). As a purchaser of goods in the course of interstate trade, the Petitioner was required to furnish C-Forms on the basis of which Aman Marketing could take the benefit of concessional rate of tax under Section 8(1) and 8(4) of the CST Act. Such C-Form could be obtained from the jurisdictional VATO under Rule 5 of the Central Sales Tax (Delhi) Rules, 2005.

3. While filing the return for the first quarter of 2013-14, in Form DVAT-16, although the Petitioner disclosed the details of the purchases made from Aman Marketing, Kanpur, the Petitioner appears to have inadvertently shown the aforesaid purchases of Rs.1,79,44,191/- not in the field relevant for C-Forms. Instead of indicating the above figure in coloumn R11.1 of the Form, the Petitioner mistakenly showed the figure in coloum R11.3, i.e., against inward stock transfer against F-Form. The Petitioner, in all subsequent quarters, correctly showed the purchases made from Aman Marketing against C-Form. In support of this plea, the copy of the invoices issued by Aman Marketing in relation to the purchases made in the first quarter of 2013-14 have been enclosed by the Petitioner.

4. The stand of the Respondent-DTT, in its reply, is that this is a mistake by the Petitioner and not of the DTT. Instead of filing an application for rectification before the VATO, the Petitioner ought to have revised the return under Section 28 of the Act.

5. The Court is of the view that the mistake explained by the Petitioner appears to be bona fide. Although it was open to the Petitioner to have

revised the return, admittedly, the period of revising the return has already expired. With the Petitioner not asking for any extraordinary benefit but only what it is entitled to in accordance with law, the Court is of the view, the Petitioner should be permitted to rectify its return, even at this stage and its clarification that aforementioned figures of purchases made from Aman Marketing for the first quarter of 2013-14 should be treated as purchases made against C-Forms should be accepted.

6. The return filed by the Petitioner for the first quarter of 2013-14 shall stand rectified accordingly. An appropriate order to this effect be passed by the VATO on the strength of this order, not later than two weeks from today and the Petitioner shall not later than one week thereafter be permitted to download the C-Form pertaining to the above transactions.

7. The petition stands disposed of in the above terms.

8. Copy of order *dasti* under the signatures of Court Master.

[2017] 55 DSTC 92 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Diwan Chand: Member (A) and M. S. Wadhwa: Member (J)

APPEAL NO. 219/ATVAT/2016-17

M/s Swastic Enterprises ... Appellant
1027/4, Pai Walan, Chawri Bazar,
Delhi – 110006

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 03.05.2017

PENALTY – SECTION 9 (2) OF CST ACT READ WITH SECTION 86(14) OF DVAT ACT, 2004 – VEHICLE WITH CONSIGNMENT ENTERED DELHI BOARDER ON 26.11.2015 – DS2 WAS NOT AVAILABLE WITH DRIVER DURING CHECKING BY OFFICIALS OF DEPARTMENT – DS2 FILED IN THE MORNING OF 26.11.2015 BEFORE TRUCK ENTERED DELHI – PENALTY OF RS. 50,000/- IMPOSED

DS 2 – IN EXERCISE OF POWERS CONFERRED BY SECTION 70 OF DVAT ACT, THE COMMISSIONER, VAT HAS ISSUED A NOTIFICATION DATED 28.02.2014 REQUIRING THE DEALERS RECEIVING THE GOODS IN DELHI FROM OTHER STATES TO FURNISH THE DETAILS OF SUCH GOODS IN FORM T – 2. THIS NOTIFICATION WAS PARTLY AMENDED BY OTHER NOTIFICATION DATED 10.09.2015 AND FORM T-2 WAS REPLACED BY ANOTHER FORM DELHI SUGAM-2 (KNOWN AS DS-2 IN SHORT). DELHI HIGH COURT IN THE CASE OF DELHI TRANSPORTERS ASSOCIATION AND ANR. VS. GOVT. OF NCT HAS HELD THAT AS PER SECTION 61 READ WITH RULE 43 OF DVAT ACT AND DVAT RULES RESPECTIVELY THE DRIVER OF THE VEHICLE OR PERSON INCHARGE OF GOODS VEHICLE IS NOT REQUIRED TO CARRY WITH HIM DS-2, SO DRIVER OF THE VEHICLE CANNOT BE COMPELLED TO CARRY IT WITH HIM WHILE ENTERING THE VEHICLE IN THE TERRITORY OF DELHI.

Held

In the light of above facts and circumstances and decision by the Hon'ble Delhi High Court in the case of the Delhi Transporters Association and Anr. (Supra), the impugned order dated 22.09.16 passed by Ld. OHA are liable to be quashed. Accordingly, present appeal is allowed.

Present for the Appellant : Sh. H. C. Bhatia, Advocate

Present for the Respondent : Sh. N. K. Gulati, Advocate

Cases referred:

Delhi Transporters Association and Anr. vs. Govt. of NCT, 55/DSTC/J-11 DHC

Order

1. The present appeal has been moved against impugned order dated 22.09.2016 passed by Ld. Additional Commissioner, hereinafter called objection hearing authority (in short OHA), who vide this order upheld the penalty orders dated 05.12.2015 passed by Ld. AVATO, u/s 9(2) of Central Sales Tax Act (in short CST Act) read with section 86(14) of DVAT Act vide which penalty to the tune of Rs. 50,000/- was imposed.

2. The brief facts of the present appeal are that the appellant is engaged in the business of the re-sale of the papers etc. and is registered with the department since 1983. The appellant has always been assessed on the basis of its book version of sales and, thus, has an accepted history. The books of account of the appellant are also liable to compulsory audit.

3. The appellant, inter-alia, makes its purchases in the course of inter-state trade and commerce from M/s J.K. Paper Ltd., Songadh, Distt.-Tapi, Gujarat. In exercise of powers conferred by section 70 of DVAT Act, the Ld. Commissioner, VAT, had issued a notification dated 28.02.2014 requiring the dealers receiving the goods in Delhi from other States to furnish the details of such goods in Form T-2. This notification was partly amended by other notification dated 10.09.2015 and Form T-2 was replaced by another form Delhi Sugam-2 (known as DS-2 in short). One such consignment sent by J.K. Papers Ltd. by way of two inter-state sales entered Delhi border on 26.11.2015 by vehicle No. HR-55J-1835 from Songadh but Form DS-2 was not available with the driver of the vehicle during the course of checking of the goods by the officials of the Department and, therefore, a show cause notice was issued by the Assistant Commissioner (Spl. Zone) requiring the appellant to file its reply within 07 days. However, since 25.11.2015 was holiday, the appellant had filed DS-2 for the above inter-state purchase in the morning of 26.11.2015 before the truck entered Delhi and was intercepted by the officers of the department.

4. The appellant filed reply to show cause notice on 02.12.2015 stating the above facts and circumstances including the fact that even selling dealer had notified his department. But even then the Ld. VATO mechanically issued a notice of assessment of penalty u/s 9(2) of the CST Act on 05.12.2015 imposing penalty of Rs. 50,000/- u/s 86(14) of the DVAT

Act. The appellant has challenged the impugned orders dated 22.09.2016 passed by Ld. OHA on various grounds, which are as follows:-

i) That the notice of assessment of penalty issued u/s 9(2) of the CST Act, 1956, by Ld. VATO, Ward-11 as well as order dated 22.09.16 passed by Ld. OHA are contrary to law and the facts of the case.

ii) That the impugned notice of assessment of penalty u/s 9(2) of the CST Act is liable to be quashed as the same is without jurisdiction and authority of law as section 9(2) of the CST Act does not envisage any such penalty imposed by the VATO.

iii) That the impugned penalty liable to be quashed as the show cause notice having been issued by the Asstt. Commissioner (Spl. Zone) and reply having also been filed before the Asstt. Commissioner (Spl. Zone), VATO, Ward-11 had no authority to issue the penalty order.

iv) That the impugned penalty is also liable to be quashed as the Ld. VATO had together failed to consider the reply filed by the appellant

v) That the impugned notice of assessment of the penalty u/s 9(2) of the CST Act is also liable to be quashed as the same has been passed in a mechanical manner without application of mind.

vi) That the appellant could not have furnished DS-2 on account of 25.011.15 being a holiday. However, the same was furnished at the next earlier opportunity i.e. in the morning of 26.11.15, before the truck had entered in Delhi and was intercepted by Asstt. Commissioner (Spl Zone).

vii) That the appellant having already furnished information in DS-2 on 26.11.15, the Ld. VATO ought to have taken note of the same before imposing penalty on 05.12.15

viii) That the Ld. VATO failed to note that the goods were purchased from M/s J.K. Paper Ltd, a public limited company, against excise invoice and as such, there could not be intention to evade tax

ix) That the Ld. VATO as well as Ld. OHA failed to note that even selling dealer had filed form-402 with his assessing authority

x) That Ld. OHA failed to note that Sec. 9(2) of CST Act as well as Sec. 86(14), DVAT Act, was not applicable under the facts and circumstances of the present case

xi) That the Ld. OHA failed to note and appreciate that the requirement of the driver carrying a copy of DS-2 has come into force vide notice and dated 08.01.16 and was not in force on 26.11.15.

xii) That without prejudice to the submissions that no penalty was not imposable, maximum penalty that could be levied was Rs.500/- u/s 86(9) of the DVAT Act.

5. The present appeal was heard on merit after disposal of application u/s 76(4) of the DVAT Act.

6. Heard to appellant's Ld. Counsel Mr. H.C. Bhatia and Mr. N. K. Gulati on behalf of the revenue and perused the file and recent judgment of Hon'ble Delhi High Court in the case of Delhi Transporters Association and Anr. Vs. Govt. of NCT of Delhi decided on 22.03.2017.

7. The appellant's Ld. Counsel, during the course of arguments reiterated the above facts and also submitted that Hon'ble Delhi High Court in the above case has held that as per section 61 read with Rule 43 of DVAT Act and DVAT Rules respectively the driver of the vehicle or person incharge of goods vehicle is not required to carry with him DS-2, so driver of the vehicle cannot be compelled to carry it with him while entering the vehicle in the Territory of Delhi. Secondly, in the peculiar facts of the present appeal, it is clear that the vehicle entered in the Delhi area on 26.11.2015 in the evening and 25.11.2015 was holiday and appellant filed DS-2 in the department in the morning of 26.11.2015 at 11.38 a.m. as is clear from Annexure-II filed alongwith appeal, so appeal be allowed and impugned orders dated 22.09.16 passed by Ld. OHA be set aside. The ratio of the above case of Delhi Transporters Association and Anr. (Supra) is applicable to the facts and circumstances of the present appeal.

8. While Ld. Counsel for the revenue supported the orders passed by the lower authorities and submitted that a suitable precondition be imposed before fixing appeal for hearing on merit.

9. It would be appropriate to reproduce following para of the above judgment passed by Hon'ble Delhi High Court before proceeding further which is as follows:-

> Para 7- ''It is evident from the above factual narrative that like in the past when the Delhi Sales Tax Act was in force, the DVAT authorities after the enactment of Delhi VAT ACT, 2005 have chosen not to publish the relevant forms. They merely appear to

have drafted certain forms and have assumed that the general public, i.e. goods transporters are expected to know it and use it. It is a well settled proposition of law as espoused in B.K. Srinivasan v State of Karnataka, (1987) 1 SCC 658 that in the absence of a proper publication of the rules or statutory instrument, the action of the executive authorities is unsupportable by law. Both Section 61 in its relevant part and Rule 43 clearly speak of statutory forms. In fact Rule 43 remains unamended- however, according to the respondents Form Nos. 34 & 35 are no longer in existence. In other words, the rule speaks of DS-2 as the relevant form in existence. Without an amendment of the Rules or publication thereof or without appropriate publication of the forms, the executive authority, i.e. the DVAT Department cannot insist that carriers and goods vehicle owners/operators are under any responsibility or obligation to carry such unpublished forms. Any action taken by them towards detention or initiation of penalty, consequent to the alleged non-adherence to such condition is bound to fail.''

10. It is clear from the above judgment that neither section 61 nor Rule 43 has been amended, providing for carrying DS-2 while entering Delhi jurisdiction by any vehicle. So, in the light of the above judgment owner or drivers of vehicles cannot be compelled to carry the unpublished form DS-2 while entering Delhi border and on failure to carry DS-2, penalty cannot be imposed. Secondly, in the present circumstances, as 25.11.2015 was holiday and on next very day in the morning appellant filed DS-2 in the department even then Ld. VATO imposed penalty. The reply to the show cause notice was given on 30.11.15 (Annexure-III) – but without considering it penalty was imposed in mechanical manner without application of mind. The reply was filed on 02.12.15 and penalty was imposed on 05.12.15. The reply was given to AC (Spy. Zone) who had given the show cause notice while penalty has been imposed by AVATO of ward-11. It is also amply clear from the above facts that before truck was intercepted in Delhi, DS-2 was already filed with the Department. So, in the light of above facts and circumstances and decision by the Hon'ble Delhi High Court in the case of the Delhi Transporters Association and Anr. (Supra), the impugned order dated 22.09.16 passed by Ld. OHA are liable to be quashed. Accordingly, present appeal is allowed.

11. Order pronounced in the open court.

12. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 97 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Diwan Chand: Member (A) and M. S. Wadhwa: Member (J)

Appeal No.5-28/ATVAT/11-12
Tax Period: 2007-2008

M/s Delhi Waste Management Pvt Ltd.,
F-72/2, Okhla Industrial Area, Phase-II
New Delhi-110020 ... Appellant

Versus

Commissioner of Trade & Taxes ... Respondent

Date of order 11.01.2017

SALE - MEANING OS SALES – RIGHT TO USE – DEFINITION OF SALE UNDER SECTION 2 OF DELHI VALUE ADDED TAX ACT, 2004 - SPACE ON THE WALL OF DHALLOW, WHICH IS EMBEDDED TO EARTH GIVEN FOR ADVERTISEMENT – WHETHER SALES? - WHETHER LIABLE TO TAX WITHIN UNDER THE DVAT ACT; 2004?

GOODS – WHETHER THE SPACE ON THE WALL OF DHALLOW, WHICH IS EMBEDDED TO EARTH; ARE GOODS WITHIN THE DEFINITION OF DVAT ACT; 2004?

Delhi Waste Management Private Ltd. (in short DWM) is engaged in the business of collection, segregation, transportation and disposal of solid waste generated in Central, City and South Zone. The Municipal Corporation of Delhi (in short MCD) entered into a concession agreement with the appellant company DWM. As per the agreement DWM was required to collect and transport solid wastes from garbage dhalos to landfill site using specialized trucks and the amount paid for this service was called "tipping fee". The project includes repair, renovation, restoration and re-instatement of "Dhalos". MCD entitled the DWM to permit advertisement on the sides of waste storage depots and receive consideration for it. The appellant was permitted by MCD to give on license space on external roadside wall of the Dhalao to advertising companies for their advertisement. Dhalao is pacca landfill of MCD given to appellant for removing garbage there from. Accordingly, objector entered into an agreement with M/s Greenline and Advertising Co. and given right to advertising company to utilize earmarked outer portion of the spaces of the walls or the dhalos for advertisement. The appellant allowed the advertisers to attach their bill boards on walls. The advertising material/ bill boards/ hoarding are detachable i.e. are removed from time to time as the tenure of one advertiser changes.

The audit of the Company for the period 2007-08 was got done on the recommendation of Steering Committee. During audit it was revealed that "space sale" on the dedicated walls which was given to the dealer as a quid pro quo to the construction of public utilities is "goods" and hence covered in the definition of sale u/s 2 of DVAT Act 2004, dealing with transfer of "right to use" goods and hence liable to be taxed @ 12.5% treating unspecified goods u/s 4 of DVAT Act. Accordingly, Assessing Authority, VATO (Audit) issued notices of default assessment of tax and interest u/s 32 and for assessment of penalty u/s 33 of DVAT Act and created additional demands against the appellant. Aggrieved with the default assessment orders the appellant filed objections before the OHA, who rejected the objections. Aggrieved with the impugned orders passed by the OHA, the appellant had field appeals before Appellate Tribunal, VAT.

The main contention of the appellant was that the wall was an immoveable property and letting a side of it was not covered under the VAT laws as the same was not movable goods and hence cannot be taxed under a deemed sale of right to use goods. Appellant further stated that neither the side of the wall nor the Dhalao of the wall was transferred by physical possession to the advertisement 'company, there was right to use the wall but the wall is immovable property which is not taxable and does not fall within the definition of 'goods'. The appellant also submitted that he did not give the wall or sides of Dhalos on rent, but had allowed the advertisers to attach their bill boards on walls. The advertising material/ bill boards/ hoarding are detachable i.e. are removed from time to time as the tenure of one advertiser changes.

Issues Before the Hon'ble Tribunal

"Whether space on the wall of Dhallow let out by the appellant to the advertising agencies and which is embedded to earth and granted by MCD to the appellant is goods within the definition of DVAT Act; 2004.

"Whether possession of the space on the wall of dhallow was ever given by the appellant to the advertising agencies.

Held

The rent collected by the appellant which is for renting the space on the walls of the dhallow which is immoveable property and the fact that when neither the hoardings are erected by the appellant nor the advertisements have been done by the appellant. So far as the appellant is concerned facts

on record do not testify that there is right to use of hoardings/penal and advertisements by the appellant. The transactions between the appellant and the advertising agency does not fall within the definition of right to transfer any goods for any use and cannot be taxed. Appeals allowed orders imposing tax, interest and penalty set aside.

Case Law Cited

Tata Consultancy Services v State of Andhra Pradesh: (2004) 137 STC 620 (SC), **State of Andhra Pradesh V Rashtriya /spat Nigam Ltd;** (2002) 126 STC 114 (SC). **20th Century Finance Corporation Ltd. v State of Maharashtra:** (2000) 119 STC 182 (SC), **Laxmi Audio Visual INC v Asstt. Commissioner of Commercial Taxes:** (2000) 124 STC 426 (Kar), **Modem Decorators v CTO:** (1990) 77 STC 460 (WBTT), **Servel Advertising Pvt. Ltd. v Commercial Tax Officer** (1993) 89 STC 1 (WBTT) **Commissioner of Sales tax (UP) v Prahalad Industries** (1999) 112 STC 548 (All), **Dy. Commissioner of Sales Tax v Ruby Rubber Industries**: (1998) 108 STC 4JO (Ker) and **Gas Authority of India v State of Tripura**: (2010) 27 VST 116 (Gauhati).

Commissioner of sales tax Vs. Bombay Sound Service (1999) 112 STC 290 **Bombay Growth & Finance Ltd Vs. State of Gujarat** (1992), 85 STC (Guj), CTO VS. **Sadhufshahr Kraj Vikrai Samiti:** (2004) 135 STC 90 (Raj), **Sawe Advertising Pvt. Ltd. Vs., Commercial Tax Officer:** (199_3) 59 STC 1 (WBTT), **Laxmi Audio Visual Vs. Asstt. Commissioner of Commercial Taxes**: (2000) 124 STC 426 (Kar).

Present for the Appellant : Sh. P.S. Sarin, Advocate

Present for the Respondent : Sh. S. B. Jain, Advocate

ORDER

1. This order shall dispose off the above noted appeals filed by the appellant challenging the impugned orders dated 03.02.2011 passed by the Ld Additional Commissioner-Special Zone, hereinafter called the objection Hearing Authority, in short OHA who vide impugned orders rejected the objections filed by the appellant and upheld the default assessment order passed by the Ld VATO ward-91.

2. Brief facts of the case are that MCD has entered into a concession agreement with the appellant company i.e. M/s Delhi Waste Management Private Ltd. (in short DWM). The appellant company is engaged in the business of collection, segregation, transportation and disposal of municipal solid waste generated in Central, City and South Zone. The DWM is required to collect and transport solid wastes from garbage dhaloas to landfill site using specialized trucks and the amount paid for this service is called

"tipping fee" Per tonne of MSD. The project includes repair, renovation, restoration and re-instatement of "Dhaloas". MCD entitles the DWM to permit advertisement on the sides of waste storage depots and receive consideration for it. As per the appellant, he is permitted by MCD to give on license space on external roadside wall of the Dhalao to advertising companies for their advertisement. Dhalao is pacca landfill of MCD given to appellant for removing garbage there from. Accordingly, appellant entered into an agreement with M/s Green line and Advertising Co. and given right to advertising company to utilize earmarked outer portion of the spaces of the walls or the dhaloas for advertisement.

3. The audit of the Company for the period 2007-08 was got done on the recommendation of Steering Committee. During audit it was revealed that "space sale" on the dedicated walls which was given to the dealer as a quid pro quo to the construction of public utilities is "goods" and hence covered in the definition of sale u/s 2 of DVAT Act 2004, dealing with transfer of "right to use" goods and hence liable to be taxed @ 12.5% treating unspecified goods u/s 4 of DVAT Act. Accordingly, Assessing Authority, VATO (Audit) issued notices of default assessment of tax and interest u/s 32 and for assessment of penalty u/s 33 of DVAT Act and created following demands against the appellant: -

Tax Period	Tax	Interest	Penalty
April 2007	3,95,043	1,80,205	6,32,068
May 2007	3,74,043	1,66,014	5,79,766
June 2007	3,85,628	1,66,401	5,82,298
July 2007	3,63,419	1,52,337	5,34,225
August 2007	4,71,581	1,91,867	6,69,645
September 2007	4,02,835	1,58,935	5,55,939
October 2007	3,78,049	1,44,487	5,06,585
November 2007	3,88,904	1,43,841	5,01,686
December 2007	3,80,341	1,35,985	4,75,426
January 2008	4,16,366	1,43,732	4,99,639
February 2008	5,77,616	1,92,275	6,70,034
March 2008	5,93,213	1,72,844	6,03,918

4. Aggrieved with the default assessment orders the appellant filed objections before the OHA who vide aforesaid orders dated 03.02.2011 rejected the objections.

5. Default assessment order dated 04.08.2010 are extracted as under:-

> "The scheme of the transaction is that the dealer has been awarded contract by MCD to construct and maintain public utilities. The property in these utilities built on government land vests in the MCD from day one when construction activity starts.
>
> In return, as quid pro quo, the dealer among other things, is given exclusive right to use the space available as the walls of the public utility so constructed.
>
> The dealer then sells the space as the walls to various advertising agencies for a price. The central issue is whether the space so made available to the dealer by MCD as a quid pro quo to the construction of public utilities is goods and hence any price received by the dealer 'for transfer of right to use' to use these goods "space" is subject to tax.
>
> The dealer has filed a detailed reply on this issue. The main contention of the dealer is that the right of space utilisation is in fact a right to transfer of immoveable property which is outside the scope of VAT laws.
>
> He has further raised another contention that on the "space" sold by him to advertisers on "right to use" said for a limited period, the advertisers create their own Advertisement with their own money and labour and he has further contended that they pay service tax as per law.
>
> The audit team has given a careful consideration to the factual matter of the case and on the legal contention raised by the counsel of the dealer and also gone through the material submission filed by the dealer.
>
> It is pertinent to note here that the dealer is not transferring the wall but is transferring only space on the wall.
>
> In view of the audit team the "space can be categorised as "goods". It is marketable, it is transferrable, it is possessed and it is delivered. These attributes were laid down by the Hon'ble Supreme Court in the TCS case wherein the question was whether "Software" was "goods". The Hon'ble Supreme Court held that "Software" is "goods" because software satisfied the above principle.

"Space sale" which the dealer is resorting to from our view, is clearly satisfying the criteria laid down by Hon'ble Supreme Court in the TCS case to the definition of goods. To hold it otherwise will not be correct interpretation of law.

"Spaces sale" is a modern marketing tool. Space lots are sold in films, on metro stations, electric poles etc. in all such cases, in our view, what is transferred is not the metro pole, or the electric pole, but a particular "Space slot" on such poles. Such "Space slot" and its sale on transfer of right to use is covered by the definition of goods and hence can be made subjected to levy of VAT.

Hence in view of the above, the audit team holds that "space sale" on the dedicated walls which was given to the dealer as a quid pro quo to the construction of public utilities is "goods" and hence covered in the definition of sale u/s 2 of DAVT Act 2004 dealing with transfer of "rights to use" goods and hence liable to be taxed.

"Space sale" is not covered by any schedule to DVAT Act, hence treating this as unspecified goods u/s 4 of DVAT Act, the dealer is taxed @ 12.5% on total consideration received.

Along with interest and penalty u/s 86(12) of DVAT Act, 2004 is also imposed."

6. Ld OHA while disposing of the objections made following observations:-

"9. I have heard Ld. Counsel for the objector and have gone through the record. I have carefully gone through all the judgments relied upon by the Ld. Counsel for the objector. The main contention of the Ld. Counsel for the objector is that the wall is an immoveable property and letting a side of it is not covered under the VAT laws as the same is not movable goods and hence cannot be taxed under a deemed sale of right to use goods. Objector further stated that neither the side of the wall nor the Dhalao of the wall is transferred by physical possession to the advertisement 'company, there is right to use the wall but the wall is immovable property which is not taxable and does not fall within the definition of 'goods'. Further, objector has not given possession of the wall to the advertising company.

10. After going through records and considering the judgments relied upon by the Ld. Counsel for the objector, audit report and

other documents produced before me during hearing of these objections I am of the view that objector has attempted to raise the issue of renting of wall to divert the attention on main issue of taxability on hoardings. Even though the wall is an immovable property and hiring or letting should not be subject to imposition of VAT but in the present case the issue is not of hiring of wall or renting of space out imposition of tax on the transfer of right to use in respect of hoardings / kiosk /penal on such walls.

11. It cannot be in dispute that the hoardings/penal/kiosks are goods being movable property subject to VAT in case any sale purchase is made. The sale of these movable properties may be out right basis or there may be deemed sale on transfer of right to use basis; both are taxable. I am also of the view that the attachment of movable property in this case is only for the proper and smooth functioning/use of the goods in question. Merely by fixing the kiosk/panel on a wall does not change the character of goods to immovable property.

19. The objector while candidly admitting the taxability on hoardings, attempted to shift the tax liability on the advertisers who were given contracts to put hoardings/advertisement panels on its dahlias / other sides.

21. After considering the facts and circumstances of the case of the opinion that the issue in question is not renting the wall but the issue of taxability on sale of advertisement panels/hoardings which are being put on the walls/dhaloas. I am of the considered view that even though the advertisement panels/hoardings are attached on the walls of the objector but these were always subject to severance and can be removed! from that wall which showed that hoardings are not immovable ‘property. The degree of annexation was such that the hoardings or structures could be removed any time. The masonry base (dhalao) and the hoardings or advertisement boards fastened to it were different entities. It was the hoarding, which was let by the objector/advertisers. The hoarding was fastened to the steel structure, which was attached to the earth. Unless the hoarding was found to be permanently fastened to the said structure it could not be claimed to be an immovable property.

Therefore, while considering the order of Hon’ble Courts in the matter of Upasana (supra) and Selvei (supra) and the facts and circumstances of the case the objections of the objector are liable to be rejected.”

7. Aggrieved with the impugned orders passed by the OHA, the appellant has filed appeals before us and has assailed the impugned orders on the following grounds:-

1. The impugned Assessment Order u/s 32 of the DVAT Act, 2004 is opposed to law, facts and circumstances of the case.

2. That there is no default at all under the provisions of the Act since the returns were filed in compliance of the provisions of the law and settled principles laid down by Apex Court and various High Courts on the issue.

3. That the Objection Hearing Authority has grossly, patently erred in concluding that MCD has given licence of Dhallow as immovable property for a consideration. This is absolutely incorrect. On the contrary the MCD has granted "tipping fee" being an amount payable by MCD as per definition of "tipping fee" read with Article 7 of the Contract with MCD. This tipping fee is for collection of garbage which MCD has paid to the Appellant.

4. That the Objection Hearing Authority has held in giving a finding that the appellant has given on rent hoardings/kiosks/panels to the advertising agency. This is absolutely incorrect and contrary to the contract with MCD and contract with advertising agency which is only for "space on the wall of Dhallow".

5. That the space of the wall of Dhallow given on rent to advertising agency is "immovable property" attached to earth in terms of Section 3(36) of the General Clauses Act, 1897.

6. That the "space on the wall of Dhallow" is not "goods" within the meaning of Section 2(m) of DVAT ACT, 2004 read with Article 366 (12) of the Constitution read with Section 2(7) of the Sale of Goods Act and hence it is not taxable under the provisions of Right to use Goods under DVAT Act.

7. That the Objection Hearing Authority has erred in quoting the cases which are out of context and relating to renting of hoarding/ panel and not of the space of the wall.

8. That in the impugned order there is nothing about justification of penalty or any speaking order except the notice of default assessment of tax and interest under section 32 and therefore

the notice for penalty is bad in law and violative of the principles of natural justice. It is not at all a speaking order and bad in law.

9. That none of the ingredient of Section 86(12) read with section 86(1) is satisfied for levying penalty. Section 86(1) defines "Tax Deficiency" to mean the difference between the tax properly payable by the person in accordance with the provisions of the Act and the amount of tax paid by the person in respect of tax period. The appellant has paid tax in accordance with provisions of the Act. Further the appellant has not paid any tax on rental of wall being immovable property on which there cannot be any tax since immovable property is not "goods" within the definition of "goods" under DVAT Act, 2004.

10. That Second Proviso to Section 86(2) of the Act prescribes that the penalty imposed U/s 86 can be remitted where a person is able to prove existence of reasonable cause for the act or omission giving rise to penalty during objection proceedings U/s 74 of the Act.

11. That the relevant terms of the contract is on record as also before this Hon'ble Tribunal. These terms of the contract remained undisputed.

12. That the principles laid down on the basis of aforesaid contract and the documents on a para-materia facts by Supreme Court and various High Courts as relied upon by the appellant remained undisputed and the Ld Authority did not distinguish in any way the aforesaid judicial decisions of the Apex Court and the High Court in any manner nor it placed on record any of the judgment of any court which could support his contention and thus no penalty can be levied.

13. That it is settled law that if the impugned notice is vague, general and nonspeaking rather absolutely mum then it is empty formality signifying nothing for in these circumstances the noticee is unable and prevented for sufficient cause to make out objection / penalty which he is required to defend or clarify/explain/show cause. For this the appellant has placed reliance on the decisions of Shri Durga Cement Co Ltd Vs State of Bihar (1999) 114 STC 268 (Pat); Associated Soap Distributing Co Vs State of Rajasthan (1972) 29 STC 679 (Raj);

14. That penalty proceedings being of quasi criminal in nature, the burden lies on the Deptt. to establish, to bring and let noticee

/ dealer know material on record to show that the noticee has deliberately committed any offence. This has not been done in this case and therefore the burden to prove which lies with the department has not been discharged.

15. That penalty proceedings are independent proceedings and unless the authority apart from giving a finding in the assessment order, proves by some other evidence failure on the part of the noticee, no penalty can be levied. It is further submitted that penalty is not a continuation of assessment proceedings.

16. That the impugned penalty notice fails to consider not only the material available on record but also ignored the judicial precedent in favour of such para material facts and law emanating therefrom.

17. That the notice of default assessment of tax and interest U/s 32 was issued, there was no finality of quantification of tax as such which could form the basis of levy of penalty and hence penalty notice is bad, untenable and illegal.

18. That the Appellant craves leave to add, modify, delete any of the grounds either before or at the time of hearing of the Appeal.

19. In support of his contentions appellant has placed reliance on the decisions of Tata Consultancy Services v State of Andhra Pradesh: (2004) 137 STC 620 (SC), State of Andhra Pradesh V Rashtriya /spat Nigam Ltd; (2002) 126 STC 114 (SC). 20th Century Finance Corporation Ltd. v State of Maharashtra: (2000) 119 STC 182 (SC), Laxmi Audio Visual INC v Asstt. Commissioner of Commercial Taxes: (2000) 124 STC 426 (Kar), Modem Decorators v CTO: (1990) 77 STC 460 (WBTT), Selvel Advertising Pvt. Ltd. v Commercial Tax Officer (1993) 89 STC 1 (WBTT) Commissioner of Sales tax (UP) v Prahlad Industries (1999) 112 STC 548 (All), Dy. Commissioner of Sales Tax v Ruby Rubber Industries: (1998) 108 STC 4JO (Ker) and Gas Authority of India v State of Tripura: (2010) 27 VST 116 (Gauhati), Khemka & Co Vs State of Maharashtra ; Jain Bros Vs Union of India (1975) 35 STC 571 (SC) (1970) 77 ITR 107 (SC) (1984) 57 STC 35 (All) (1980) 45 STC 471 (All) ; CST Vs Nand Mohan Madan Mohan; Narayan Swaroop Jain Vs State of UP ; ACTO Vs Kumavat Udyog (1995) 97 STC 238 (Raj) ; Cement Marketing Co of India Ltd v ACST (1980) 45 STC 197 ; Hindustan Steel Ltd v State of Orissa (1970)

25 STC 211 (SC); EID Parry (I) Ltd v ACCT (2000) 117 STC 457; Bhoj Mal and Son v Commissioner of Sales Tax, MP (1982) 50 STC 36 (MP); Dada Bhai Chiri Miri Ponri Colliery Co Pvt Ltd v Commissioner of Sales Tax, MP (1979) 44 STC 100 (MP); Shital Fibre Ltd v State of Punjab reported as (2007) 5 VST 354 (P&H).

8. We have heard Sh. P. S. Sarin, Adv., Ld. Counsel for the Appellant and Sh. S.B. Jain, Adv., Ld Counsel for the Revenue and gone through the record carefully.

9. Ld Counsel for the Appellant reiterating the grounds of appeal submitted as under:-

(i) The issue for decision is " Whether space on the wall of Dhallow let out by the appellant to the advertising agencies and which is embedded to earth and granted by MCD to the appellant is goods within the definition of DVAT Act; 2004 and Whether possession of the space on the wall of dhallow was ever given by the appellant to the advertising agencies.

(ii) In the default assessment order liability to tax, interest and penalty on the appellant has been fastened observing that the dealer sells space of the walls granted to it by MCD to various advertising agencies and these advertising agencies create their own advertisements with their own money and labour. This finding itself shows that assessment has tried to make a distinction between the wall and space on wall and taking the view that the appellant is not transferring the wall but space on wall.

(iii) Ld. OHA while disposing of the objections did not examine the contract with MCD and the appellant and the Contract between appellant and advertising agencies, invoice raised by the appellant on Advertising Agencies , findings of facts and contentions of AVATO and written arguments of the Appellant and rather observed that that "the appellant had let out hoardings/ kiosk/penal and not the space of the wall of the Dhallow and made it taxable as "goods'' under the provisions of section 2 (zc) i.e. right to use goods.

(iv) The issue before the OHA was whether the findings of the VATO that the space on wall let out by the appellant to the advertising agencies was taxable as goods on the analogy drawn of the taxability of software and invented a new logic of sale of kiosks

and hoardings and their taxability. By doing so the OHA has exceeded power u/s 74(7) of DVAT Act, 2004 and hence the order is bad, illegal and non-enforceable.

(v) Physical possession of goods is essence for transfer of right to use the goods. Neither the authorities below and Govt. Advocate have stated anything about the physical possession of the space of the wall or the wall or whatever name it may be called was never given to the advertising agencies or anybody. The physical possession of the goods with right to use goods is essence for transfer of the right to use goods which is missing in the instant case and therefore it cannot bring under the ambit of taxation for right to use goods.

(vi) Clause 3.2 (b) of the agreement between the MCD and the appellant specifically prohibits the parting of the possession.

(vii) From the definitions of "movable property" and "immovable property" in the General Clauses Act 1897 and of the expression "attached to the earth" in the Transfer of Property Act, 1872 it is clear that if any property is embedded to the earth or attached to the earth in a manner essential for the beneficial user of the immovable property, it would be an immovable property. The real criteria to examine whether a property is movable property or immovable property is whether the movable property which is embedded or attached to the earth can be used without so attaching and the attachment is only for the proper and smooth functioning of particular movable property or equipment or it is for the beneficial user of the immovable property. If a thing is embedded to the earth or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. On the other hand, if the attachment is mainly for the beneficial enjoyment of the movable property itself, then it remains movable property even though fixed for the time being for proper enjoyment thereof.

10. Ld Counsel for the Revenue submitted that:-

(i) The appellant collects, transports solid waste and maintains Dhalos i.e. the garbage places of MCD. The appellant has also been permitted by the MCD to advertise on the walls/sides of Dhalos for which it recovers charges from advertisers and these facts are clearly detailed in para 2 and 3 of the Impugned Order.

(ii) The only issue in the appeals is "Whether the amount received by the appellant from advertisers by allowing them to advertise on the space provided on walls of Dhalos is Transfer Of Right to Use and thus liable to VAT?''

(iii) The appellant does not give the wall or sides of Dhalos on rent but allows the advertisers to attach their bill boards on walls. The advertising material/ bill boards/ hoarding are detachable i.e. are removed from time to time as the tenure of one advertiser changes.

(iv) Regarding the controversy created by the appellant that hire charges have been paid for use of wall, submission of the Ld counsel for revenue is that that the Ld. OHA vide Para 10 and 11 of his order has categorically held that the rent is paid not for wall but for placing advertisement material on hoardings attached to wall.

(v) That it is important to distinguish between the wall/ sides and the bill boards/ hoarding which are attached on walls.

(vi) The appellant allows the advertisers to paint/paste/fix their advertising material on the frames/advertising space created on walls. Therefore, charges are recovered for use of the advertising space created on walls and not for renting out the walls. As held in the impugned order vide first Para on Page 12 where it has been held that the crucial factor is that if the hoarding is removable without causing damage to the immovable property on which it is fixed, then it is a merchandise or goods. Resultantly, the transfer of right to use the above is liable to VAT.

(vii) The substance of the transaction and not its form which shall determine its nature and liability. The activity of allowing advertisement by way of hoardings/bill boards which are detachable to the walls of Dhalos is sale within the meaning of 'transfer of right to use' and is thus liable to VAT.

11. To appreciate the rival contentions it is necessary to note the relevant statutory provisions. Section 2 (zc) defines the "sale" as under:

Section 2 (zc) "sale" with its grammatical variations and cognate expression means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable

consideration (not including a grant or subvention payment made by one government agency or department, whether of the central government or of any state government, to another) and includes-

(i) ……..

(ii) ……..

(iii) ……..

iv) ……

(v) ……

(vi) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

…….

and the words "sell", buy" and "purchase" wherever appearing with all their grammatical variations and cognate expressions, shall be construed accordingly;

12. Section 2 (m) defines the word "Goods" as follows: "Goods means every kind of movable property'. The term "Moveable Property" is not defined in the DVAT Act, 2004. Therefore the definition as provided in the General Clauses Act, 1897 becomes relevant. As per section 3(26), of the General Clauses Act 1897 "Moveable Property" shall mean property of every description except immovable property. As per section 2 (26) of the General clauses Act 1897 " immoveable Property " Shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

13. A bare reading of the above provisions of the law makes it clear that any consideration or hiring charges received in respect of any immoveable property shall be outside the ambit of charging section 3 of the DVAT Act, 2004.

14. In the case of Bharat Sanchar Nigam Ltd. [2006] 145 STC 91; [2006] 3 SCC 1, the essential attributes of a transaction to constitute the transfer of right to use the goods are laid down in para 97 of the judgement which is quoted hereunder :

"97. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes:

(a) there must be goods available for delivery;

(b) there must be a consensus ad idem as to the identity of the goods;

(c) the transferee should have a legal right to use the goods consequently all legal consequences of such use including any permissions or licences required therefor should be available to the transferee ;

(d) for the period during which the transferee has such legal right, it has to be the exclusion to the transferor - this is the necessary concomitant of the plain language of the statute, viz., a 'transfer of the right to use' and not merely a licence to use the goods ;

(e) having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others."

15. In Commissioner of Sales Tax Vs Bombay Sound Services (1999) 112 STC 290 (Bom), the word "Goods" has been clarified as under.-

"Goods have been defined specifically to mean "al! kinds of movable property". The definitions of "sale price" and "turnover of sales" also make it clear that the tax is on the amount of valuable consideration received or receivable for the transfer of right to use any goods, meaning thereby movable property."

16. In Selvel Advertising Pvt. Ltd Vs Commercial Tax Officer, Alipur (1993) 59 STC 1 (WBTT), the Hon'ble West Bengal Taxation Tribunal, distinguished between the movable property and immovable property qua hoarding for advertisement:

"'30. It clearly emerges from the facts that the iron and steel framed structure with masonry base and the hoarding or advertisement board fastened to it are different entities. It is the hoarding, which is let out by the applicant. The hoarding is fastened to the steel structure, which is attached to the earth and which is an immovable property. Unless the hoarding is found to be permanently fastened to the said structure it cannot be claimed that it is an immovable property. It is the case of the applicant that the steel sheet or aluminium sheet, which is used as advertising, is permanently

fixed to the structure embedded in the earth. It is, however, the finding of the Commercial Tax Officer in his impugned order that the hoarding is not permanently fastened but is only temporarily fixed to the structure in such a way that it can be taken down or replaced at a very short notice. This finding is in conformity with the facts disclosed in the affidavits. It is really in the nature of trade fixtures, which are generally removable without material injury to the building or the structure. The contention of the applicant that the hoarding is immovable property cannot, therefore, be accepted."

17. In CTO Vs Sadulshahar Krai Vikrai Sahakari Samiti (Raj) reported as (2004) 131 STC 19 Jaipur, the difference between movable and immovable property has been clearly demonstrated.

"Plant and machinery in a ginning and pressing factory can only be used when they are imbedded in the earth and thereby, become attached to earth for its beneficial enjoyment. Such plant and machinery have to be treated as immovable property and lease thereof cannot be separately treated as transfer of right to use goods within the meaning of Notification No. F. 4(24) FD/Gr. IV/90-44 dated June 27J 1990 under the Rajasthan Sales Tax Act, 1954."

18. In 20th Century Finance Corporation Ltd v State of Maharashtra, (2000) 119 STC it has been held that handing over the possession is a pre-requisite for bringing the transaction in right to use deemed sale:- .

"Our endeavour here is to discern what transfer, in the context of the clause (d) means. Is it simply signing of a document that brings about a transfer of right to use any goods or is it also necessary to give control of the goods to complete the transfer with the intent of the passing of the right to use the goods to the hirer. A combined reading of the first and second limb of clause (29A) suggests that mere execution of a document de hors passing the domain of the goods does not result in transfer of right to use any goods and will not constitute a " deemed sale " within the meaning of clause (29A). The "deemed sale" envisaged in sub-clause (d) not only involves a verbal or written transfer of right to use any goods but also an overt act by which the transferor places the goods at the disposal of the transferee to make their use possible. On this construction, it is explicit that the transfer of right to use any goods involves both passing of the right in as well as domain of the goods in which right to use is transferred."

19. In Upasana Finance Ltd. v. State of Tamil Nadu and Another (and other cases) [1999] 113 STC 0403- Tamil Nadu Taxation Special Tribunal January 28, 1999 dealing with the Hoardings following observations are relevant:-

> 33. The entire arguments on transactions relating to the hoarding, have been advanced by Mr. C. Natarajan. Taking up O.P. No. 1727 of 1998 which has been filed by the Outdoor Advertising Association; we will set out the facts. The word hoarding means a screen or board or frame work, intended for exhibiting advertisement. The persons in this line of business, take on lease either private property or public property for the purpose of erecting a hoarding. The hoarding is usually erected with iron girders, poles and tin sheets. It is the case of the petitioner that possession of the hoarding is always retained by the person who erects the hoarding. Thereafter, an advertising agency or the manufacturer of a product who wants to display their product in the hoarding enters into an agreement with the person who erects the hoarding. According to the petitioner the customer is only a transit passenger who comes and goes depending upon the period of contract. It is the further case of the petitioner that the advertising agency or the manufacturer is not allowed to touch the hoardings at any point of time. According to the design or plan suggested by the advertising agency or manufacturer, it is the person who erects the hoardings, who arranges for the designers and painters for displaying the advertisements. They are now aggrieved by the attempt of the Sales Tax Officer to impose a tax on the display charges from the customers.
>
> 34. Correspondence has been going on between the petitioner and the Sales Tax Officers. Since notices have been issued proposing to impose a tax under section 3-A the petitioner have come forward with this writ petition seeking to invalidate section 3-A of the Act. The main argument addressed by Mr. C. Natarajan, is that section 3-A will not get attracted to these transactions. We have already held that the lease rentals will constitute the measure of tax for the purpose of levy under section 3-A. We have also held that there is no violation of articles 301 and 304 of the Constitution. In addition the learned counsel for the petitioner argues that the application of section 3-A will practically amount to imposition of a service tax on the petitioner. We do not think that the argument can be accepted. In Chapter V of the Finance Act, 1994 the concept of service tax is introduced. The words advertisements and advertising agency are defined. The advertising agency is a commercial concern engaged

in providing any service connected with the making, preparation, display or exhibition of advertisements. Taxable service is defined as the service to a client by an advertising agency in relation to advertisements in any manner. The charge of service tax is on the value of the taxable service as defined in sub-section (48) of section 65. The service tax, as defined, has a totally different concept. It is a tax on the service rendered by an advertising agency to a manufacturer of a product. They do the design, the caption and other requirements relating to the advertisements. We are concerned in the sales tax laws with the hire-charges which a person collects for the transfer of rights to use hoardings. The fact that in a particular case a person who erects the hoardings may also happen to be an advertising agency, does not oust the jurisdiction of the sales tax department in invoking section 3-A. On facts it has to be found whether a person who erects the hoardings only lets on hire the hoardings for display of advertisements or whether he also undertakes the job of designing the advertisements and painting the hoardings. Even here the two transactions are clearly separable. For the hire-charges of the hoardings, the person who erects is certainly liable to be taxed under section 3-A. This will depend upon the facts of each case. Elaborate arguments were sought to be made on the question of possession by the persons who erects the hoardings. We do not think it has any relevance to the issue. As rightly pointed out in the counter affidavit the owner of a property has a bundle of rights, namely, right to possess, right to use and enjoy, right to usufructs, right to consume, right to destroy, right to alienate and right to transfer. In law it is possible and permissible that the various rights are owned by various persons. In the case of transfer of right to use, the essence of the transfer is the passage of control over the economic benefit of the property. Inasmuch as the transfer of right to use the goods is a deemed sale, the rent paid for the use of the goods can certainly be the basis for the levy of tax. Each case will therefore depend upon the facts. In as much as we hold that the respondents have jurisdiction to go into the matter, we permit them to collect necessary materials before deciding the issue whether the transactions of the petitioner are exigible to tax. In this connection there is a useful judgment of the West Bengal Taxation Tribunal reported in (1993) 89 STC 1 (Selvel Advertising Private Limited. v. Commercial Tax Officer, Alipore Charge). That was also a case of a person erecting hoarding and receiving rent, monthly or periodical in terms of a lease agreement. The argument that it was an immovable property was rejected. Further in that

case it was found that there was nothing to show that possession and control of the hoardings and structure remained with the assessee during the period of the contract. This is precisely the reason why we have observed that the facts of each case have to be examined before a decision is arrived at. We stop with deciding that the hoardings should be treated as goods and when let out for display of advertisements there is a deemed sale under section 3-A."

20. Before proceeding further it is necessary to look at the Agreement executed between the MCD and the Appellant and the Appellant and the Advertising Company

21. The Agreement executed between the MCD and the Appellant following clauses are relevant and important Right, Title and Use of Project Facilities

(a) The Concessionaire shall have the right to the use of Project Facilities in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into or use of the same by third parties.

(b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Facilities, save and except as set forth and permitted under this Agreement.

(c) The Concessionaire shall not, without the prior written approval of MCD, use the Project Facilities for any purpose approval of MCD, use the Project and purposes incidental or ancillary thereto.

(d) The Concessionaire shall allow access to and use of the Facility site and workshop site for laying/installing/ maintaining telegraph line cleared lines or for such other public purposes as MCD may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that MCD Shall, in the event of any physical damage to the project Facilities on account thereof ensure that the project facilities are promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations

hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations on shall it incur/suffer any liability on account thereof.

3.3 Peaceful Possession

MCD hereby warrants that:

(a) The Facility site, workshop site, waste storage Depots and landfill site.

(b) Compliance with the instruction of the independent consultant/ MCD or the directions of any Government Agency other than instructions issued as a consequence of as breach by the concessionaire of any of its obligations hereunder.

(c) Closure of the project facilities or part thereof with the approval of the independent consultant/MCD.

5.21 Advertisement

The concessionaire shall be entitled to undertake or permit any form of commercial advertising or display on the sides of the waste storage Depots and in consideration thereof receive amounts from persons entrusted in advertising as aforesaid.

13.1 Assignment and Charges

(a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of MCD.

(b) The concessionaire shall not create nor permit to subsist any Encumbrance over the project Facilities except with consent in writing of MCD which consent MCD shall be entitled to decline without assigning any reason whatsoever.

22 The relevant terms & conditions of the Agreement executed between M/s Delhi Waste Management referred to as the “First Party” and M/S Green Line, a Company in outdoor media advertising business, referred to as the” Second Party” are extracted as under:-

1. Scope of Work

A. That the first party shall provide for exclusive advertising and marketing rights on space as specified in the M.C.D provision of contract for putting up advertisements at the predetermined sites (Details of which are given in Annexure 1,2 and 3) to the second party the second party shall follow the terms for advertisement set

out in the contract with M.C.D it is agreed between the parties that the walls of aforesaid sites shall be exclusively used for advertising by the second party and none else.

2. Obligations of the First Party

a. That the first party shall allow advertising on these predetermined locations on external walls as per the sites specified in Annexure 1, 2 and 3 attached herewith.

b. That the first party shall provide only the sites for advertising.

c. That the first party shall hand over 30 sites (Annexure-1) on date of signing this agreement and monthly rentals shall become applicable from the 60th day from that date for 20 sites (Annexure -2) the second party shall be handed over 5 sites every month after the expiry of the initial 60 days and rent will start from date of handing over the sites, till a total amount of 50 sites is handed over by the first party. If out of the 50 sites selected and mentioned in Annexure -1&2, if the first party is unable to handover any of the sites against the balance 20 sites to second party within 6 months from the date of signing the agreement , the second party will commit to pay for a minimum of 40sites on a pro-rata basis.

d. The first party will ensure the regular removal of garbage in and around the Dhallow and no garbage is lying outside since it will affect the business of the second party Vis a Vis its clients. In the event of this happening second party will give a three day written notice to the first party and if the site is not rectified, then the first party will deduct license fee @ Rupees 2000.00 (Rs Two Thousand only) per day if the garbage is not removed.

e. In lieu of the agreement both parties agree to additional terms as mentioned as Annexure,4

3. Obligations of the Second Party

a. The second party shall put up the advertising panels at their own cost and all expenses such as that of advertisement taxes and all other expenses arising out of putting up the advertisement panels, including cost of renovation, will be borne by the second party. Taxes, if any, including service tax, will be borne by second party which will be in addition to the monthly rental charges.

b. The Second Party shall pay in advance the monthly rental before the 10th of each month.

c. That the second party shall use the advertising space provided by the first party only for the purpose of displaying of their clients advertisements and not sublet, assign or part with possession of the stipulated place to any their party .

d. That the Second Party shall manage and conduct the stipulated space as to abide by the rules and regulations framed by the government authorities and nothing shall be advertised which is contrary to any provision made by or under any statute or law for the time being in force or rules and regulations framed in this regard and in particular not to use the stipulated space for any advertisements which are repugnant to good morals or are of indecent immoral or other improper character.

e. That the second party shall not make any alteration or addition to the stipulated space or to the façade or any alternation in size without the express consent/permission of the first party.

f. That the second party shall not interfere in any manner in the business of the first party

g. That the second party shall arrange for and provide electricity connection as per their requirement and will bear all costs. Both one time and running, use of generator will not be allowed as per MCD rules.

h. The second party will have to pay the monthly rental irrespective of its advertisement revenues getting affected any monthly rental will only stop of site is demolished or encroached upon by any work in progress or project of any government body or civic agency .

i. Renovation/reconstruction cost as well as normal maintenance such as repair, painting etc. will be done by second party.

23. From the perusal of the agreements it is apparent that in terms of the agreement executed between the MCD and the appellant in lieu of maintenance of the Dhallow, appellant is permitted by the MCD to use the outer walls of the Dhallow for exhibiting advertisements. In turn the appellant has entered into agreement with the Greenline Advertising Company who has placed the 'Hoardings' on the walls and exhibited /

displayed the advertisements of its clients. Ld Counsel for the Appellant distinguishing the case of the Upasana from the facts of the present case has correctly submitted that:-

(a) Upasana case is a case where wall or space of wall was not let out as is the present case.

(b) In Upasana case hoardings were erected and let out on hire for display of advertisement.

(c) The issue before T.N.T.S.T in Upasana is described at page 424 was under:-

> "We are concerned in the sales tax laws with the hire-charges which a person collects for the transfer of rights to use hoardings. The fact that in a particular case a person who erects the hoardings may also happen to be an advertising, agency, does not oust the jurisdiction of the sales tax department in invoking section 3-A. On facts it has to be found whether a person who erects the hoardings only lets on hire the hoardings for display of advertisements or whether he also undertakes the job of designing the advertisements and painting the hoardings. Even here the person who erects is certainly liable to be taxed under section 3-A. This will depend upon the facts of each case."

24. Appellant's case is that he has not let out the hoarding which has been let out by the advertising agency to its clients and the appellant has let out only space on the walls of dhallows which is an immoveable property. The submission of the Appellant, in our considered view has force in it and deserves to be accepted. The ratio of the decisions cited above is crystal clear that tax can be imposed on the Right to use goods and the definition of goods does not include the immoveable property. It is not disputed that Dhallow is immoveable property and as such its walls or for that matter the space on the walls also remains the immoveable property and cannot by any stretch of imagination be treated as moveable property. It is the hoarding that is fixed on the walls and is moveable property which can be brought into the tax net if all the conditions of deemed sale are fulfilled. The hoardings have not been placed and advertisement on it not displayed by the appellant but the advertising Company with whom the appellant has executed the agreement and as such the rent/charges collected by the appellant from the Advertising agency for permitting the use of walls which is immoveable property cannot be taxed under the DVAT Act.

25. Observations of the OHA in Para 8 & 10 of the Order passed by him stating that appellant has attempted to raise the issue of renting of wall to

divert the attention of main issue of taxability of hoardings is not supported by the facts on record. While accepting that the wall is immovable property and hiring or letting should not be subject to imposition of VAT and that tax is imposable on the transfer of right to use in respect of hoardings/kiosks/ penal on such walls , has fixed the liability of the appellant without showing as to how the appellant is so liable on the terms and conditions of the agreement between the MCD and the appellant or between the appellant and the Advertising agency the rent collected by the Appellant which is for renting the space on the walls of the dhallow which is immoveable property and the fact that when neither the hoardings are erected by the appellant nor the advertisements have been done by the appellant. So far as the appellant is concerned facts on record do not testify that there is transfer of right to use of the hoardings/penal and advertisements by the appellant.

26. In view of the facts and circumstances of the case and the documents on record, the transaction between the appellant and the advertising agency does not fall within the definition of right to transfer any goods for any use and cannot be taxed. Accordingly, the appeals are allowed and impugned orders relating to imposition of tax, interest and penalty are set aside.

27. Orders pronounced in the Open Court

28. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 120 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Diwan Chand: Member (A) and M. S. Wadhwa: Member (J)

Appeal No.1167-1168/ATVAT/11-12
Appeal No.1169-1170/ATVAT/11-12

M/s Eicher Goodearth Pvt. Ltd. ... Appellant
Select City Walk, 3rd Floor, Plot No. A-3
District Centre, Saket, New Delhi-110017

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order : 20 January, 2017

ENTRIES IN SCHEDULE – DELHI VALUE ADDED TAX TERRACOTTA POTS MADE FROM EARTHENWARE ARE COVERED UNDER ENTRY NO.12 OF THE FIRST

SCHEDULE, HENCE EXEMPT FROM TAX. TAXABILITY OF ESSENTIAL OIL, ARTICLES MADE OF BAMBOO AND ARTICLES MADE UP OF SILK.

INTERPRETATION OF TAXING STATUTE: IT IS A SETTLED LAW THAT WHERE LANGUAGE OF THE STATUTE IS CLEAR AND NOTHING CAN BE READ INTO BY IMPLICATION AND THE INTENTION OF THE LEGISLATURE HAS TO BE GATHERED FROM THE LANGUAGE USED.

Brief facts of the case

The appellant is manufacturing terracotta pots made from earthenware. The appellant is also dealing in Essential Oil, articles made up of Bamboo and articles made up of silk along with other goods. The appellant is selling these goods from its retail outlets in Delhi after collecting tax @ 4% except on earthen pots which are exempt as per sl. No. 12 of first schedule of DVAT Act. The Assessing Authority vide its order dated 18.2.2011 held that the entire sales made by appellant is taxable @ 12.5% in accordance with section 4(1) (e) of DVAT Act. Accordingly, Ld. VATO in its orders created demand of tax interest and penalty. Appellant filed objection against the orders before Ld. Addl. Commissioner who totally ignored the objections and upheld the demand created on the appellant. Still aggrieved appellant has filed present appeal on various grounds.

Held

'Earthen pot' means a pot which is made up of earth or clay. The essential ingredient for placing any item in this category is that, the item should be a pot and secondly it should be made up of earth or clay. In our considered view exemption has been granted on the basis of material used for the manufacture of pot and not on the basis of the end use of the pot or shape of pot or anything else. The observations of the Ld. Assessing Authority that those earthen pots which are used for storage of water or pickles can be placed in this category, in our view, is contrary to law. The assessing authority has wrongly denied the exemption on the ground that such pots are being sold by various names and at the higher prices because exemption has been granted to pots on the basis of material used in manufacturing them. They are not being used by common man is not a criteria to deny exemption as given in entry 12 of first schedule.

It is clear from the determination orders passed by Ld. Commissioner that scope of entry no. 121 of the third schedule relating to "Industrial Perfumes and its concentrates" was further extended and 'flavouring essences' were also placed in this entry but so far as present appeals are concerned, appellant is claiming that the item produced by him are

'essential oils' which are used for various purposes. So first appellant has to prove that the oils being produced by him are ''essential oils" and source of them is plants in which appellant has failed. For claiming benefit of determination order dated 06.03.2006 appellant has first to prove that oils being produced by him are essential oils and they are being used as flavouring essences then only, he can claim benefit of above determination order. The Ld. lower authorities have not given any reasoning for treating oils in question as ''luxury oils" hence, so far as Ld. OHA's orders regarding ''essential oils" are concerned, on the basis of above discussion they are quashed and in this regard matter is remanded back to the concerned VATO to decide the issue of ''essential oils" afresh in the light of above discussion and give a definite reasoning and finding for treating these oils in the category of ''essential oils" or luxury oils. This issue is decided accordingly.

The Ld. OHA while passing the impugned orders only on the ground that Bamboo made items does not find any mention in 3rd schedule, hence not covered under 4% tax category. No reasoning has been given for denying the fact that they are not covered under the head Bamboo mating. In this regard, we agree with the submissions of appellant's Ld. Counsel that items produced by appellant are made up of Bamboo mating. They have been moulded into various shapes by human intervention and in the process of production they have not lost their intrinsic character of Bamboo, hence they can be safely placed under the entry 140 of schedule 3rd and accordingly, liable to tax, @4%. In our view, appellant has rightly discharged its tax liability and assessing officer has wrongly taxed them @12.5%.

On conjoint reading of entry and definition of word 'textile' it is amply clear that silk items being produced by appellant are textiles and as they have not been mentioned in any other entry so these made ups of silk are covered under entry 164 of 3rd schedule. The Ld. lower authorities have taxed them @ 12.5% while they are liable to be taxed @ 4%. Hence, impugned orders passed in this regard are set aside accordingly.

Judgments relied upon:- Delhi High Court in the case of AME De Verre (P) Ltd. Vs. Commissioner Trade & Taxes 2015-TIOL-1515. M/s Shakti Industries, Rohtak Vs. Revisional Authority-cum-Dy. Excise and taxation Commissioner (Inspection) Rohtak, 2015-TIOL-1018. Determination order no. 21/CDVAT/2005 dated 06.03.2006 passed by Ld. Commissioner in the matter of International Flavours and Fragrances India Ltd., Mahabir Enterprises Vs. Commissioner, CTO (2000) 118 STC; M/s Kirloskar Electric Co. (1991) 83 STC 485 ; Escorts Tractors Ltd. Vs. Union of India 1993 (64)

E.T.T. 18; Supreme Court in the case of Dunlop India Limited Vs. Union of India 1983 E.L.T. 1566.

Present for Appellant : Shri A.K. Batra, Advocate

Present for Respondent : Shri M.L. Garg, Advocate

ORDER

1. These two sets of appeals No. 1167-1168 and appeal No. 1169-1170 have been filed against the impugned orders dated 21.10.2011 passed by Ld. Addl. Commissioner–Spl. Zone, hereinafter called Objection Hearing Authority (in short OHA) who vide these orders upheld the order dated 14/18-2-2011 passed by Ld. VATO u/s 32 & 33 for tax, interest and penalty respectively. As common question of law and facts are involved in these appeals, hence they are being disposed off by following common orders.

2. The brief facts, of the present appeals are that M/s Eicher Goodearth Pvt. Ltd. Is a private limited company, having its office at Select City Walk, 3rd Floor, Plot No. A-3 District Centre, Saket, New Delhi. The appellant is a registered dealer having TIN No. 07460347382. As the turnover of the petitioner is in excess of Rs. Forty Lakhs, thus its accounts are audited by a professional firm of charted accountant.

3. The appellant is manufacturing terracotta pots made from earthenware. The appellant is also dealing in Essential Oil, articles made up of Bamboo and articles made up of silk along with other goods.

4. The appellant is selling these goods from its retail outlets in Delhi after collecting tax @ 4% except on earthen pots which are exempt as per sl. No. 12 of first schedule of DVAT Act.

5. Further, to the utter shock of appellant the Assessing Authority vide its order dated 18.2.2011 held that the entire sales made by appellant is taxable @ 12.5% in accordance with section 4(1)(e) of DVAT Act. Accordingly, Ld. VATO in its orders created demand of tax interest and penalty as follows:-

Ref. No.	Period	Tax	Interest	Penalty	Total
040781401011	2nd Qtr	1,49,006/-	51,376/-	-	2,00,382/-
040781781011	2nd Qtr	-	-	1,78,807/-	1,78,807/-
040781521011	3nd Qtr	3,89,178/-	1,19,472/-	-	5,08,650/-
040781861011	3nd Qtr	-	-	4,16,420/-	4,16,420/-

6. Appellant filed objection against the above orders before Ld. Addl. Commissioner who totally ignored the objections and upheld the demand created on the appellant. Still aggrieved appellant has filed present appeal on following grounds:-

a) That Ld. OHA has erred in law and facts while passing the impugned orders.

b) The law is settled that the State is entitled to tax which is legitimately due to it.

7. Heard to appellant's Ld. Counsel Mr. A.K. Batra and Mr .M.L. Garg on behalf of the revenue and perused the file on the basis of which present appeals are being disposed of as follow:-

8. The appellant M/s Eicher Goodearth Pvt. Ltd. is a Private Limited company, having TIN No. 07460347382. The appellant is in the business of manufacturing and selling terracotta pots made from earthenware. The appellant also deals in essential oils, article made up of bamboo and articles made up of silk alongwith other goods. The appellant was collecting and paying tax @ 4% except on earthen pots which according to appellant are exempted as per sl. No. 12 of first schedule appended to DVAT Act.

9. The Ld. Assessing Authority vide orders dated 18.02.2011 held that the entire sales made by appellant is taxable @ 12.5% in accordance with section 4(1)(e) of DVAT Act. According to assessing authority these items sold by the appellant are not covered under any entry of any schedule hence, they are liable to tax @12.5% while according to appellant they are covered under specific entries as given in the schedules appended in the DVAT Act. So, in these circumstances controversy hovers around interpretation of relevant entries.

10. According to appellant, terracotta pots are covered under entry no. 12 of the first schedule which provides for earthen pots hence it is exempted from VAT. Before proceeding further it would be appropriate to reproduce entry 12 as given in first schedule of DVAT Act which is as follows:-

First Schedule
List of exempted commodities
Sl. No. 12 Earthen pot

11. The Ld. OHA vide impugned order dated 21.10.2011 upheld the assessment orders dated 18.02.2011 passed by Ld. Assessing Authority and held as follows regarding Terracotta pots being sold by the appellant-

"*As regard the items i.e. decorative other pots, is concerned, I am of the opinion that the item sold by the dealer is not covered under the entry sr. No. 12 of the first schedule. In my opinion, the earthen pot in the first schedule refers to the item "Pot, which is made of earth," which is used for the storage of water etc. The entry does not cover an item like decorative earthen pot".*

In fact the item sold by the dealer is not even decorative earthen pot and the same should be categorized an item of decoration in the shape of an earthen pot. The use of the item placed in first schedule and use of the item sold by dealer is also different. An item of decoration may be in many shapes and merely by the shape, the item will not be covered under the "first Schedule". Therefore, I hold that the decorative items sold by the dealer fall under unspecified category, attracting tax @ 12.5%."

12. Now the question arises whether the restricted interpretation given to the entry by lower authorities was as per law. 'Earthen pot' means a pot which is made up of earth or clay. The essential ingredient for placing any item in this category are that, the item should be a pot and secondly it should be made up of earth or clay. In our considered view exemption has been granted on the basis of material used for the manufacture of pot and not on the basis of the end use of the pot or shape of pot or anything else. The observations of the Ld. Assessing Authority that those earthen pots which are used for storage of water or pickles can be placed in this category, in our view, is contrary to law. The assessing authority has wrongly denied the exemption on the ground that such pots are being sold by various names and at the higher prices because exemption has been granted to pots on the basis of material used in manufacturing them. They are not being used by common man is not a criteria to deny exemption as given in entry 12 of first schedule.

13. We also agree to the submissions of the appellant's Ld. Counsel that Ld. OHA wrongly denied the exemption on the vague ground that entry does not cover decorative earthen pot. According to appellant's Ld. Counsel, in the aforesaid entry, only earthen pot is written. It is not mentioned anywhere that this entry does not cover decorative earthen pot. We agree to these submissions and hold that Ld. OHA cannot add words from its own only for the purpose of levying tax.

14. Appellant's Ld. Counsel further submitted that, it is a settled law that where language of the statute is clear and unambiguous, nothing can be read into it by implication and the intention of the legislature has to be

gathered from the language used. In this regard appellant's Ld. Counsel referred to the Hon'ble Supreme Court's judgement in the case of Mathuram Agraival's case, in which following observations were made by the Hon'ble Supreme Court:-

> "….. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention of governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."

15. Hon'ble Jurisdictional Delhi High Court in the case of AME De Verre (P) Ltd. Vs. Commissioner Trade & Taxes 2015-TIOL-1515, held as follows:-

> Para 20-"It is trite law that a taxation statute must be construed strictly on the basis of plain language (Oswal Agro Ltd. (Supra)). In the matter of interpretation of a legislation, particularly a taxing statute, ordinarily there is no place for words to be added. It is presumed that wherever necessary the legislature would provide an expansive definition and express in clear terms to indicate exclusion of what it does not intend to include."
>
> The ratio of the above case squarely applies to the facts of the present appeals while interpreting entry 'earthen pot'. For denying exemption from tax Ld. OHA added the word ''decorative'' in entry 'earthen pot' and denied exemption from VAT and assessed tax @12.5% .

17. In the above case, the question before Hon'ble High Court was whether the sale of decorative items of glass under the brand name

of 'Baldi', fall in the category of 'Handicrafts' within the meaning of the expression used in entry 128 of the third schedule of DVAT Act and, therefore, chargeable to VAT @ applicable to the said third schedule.

18. The lower authorities including this Tribunal held that these are not covered under the head ''Handicraft'' but, Hon'ble Delhi High Court placed them in the category of Handicraft and held as follows:-

Para 29.

"The acceptability, constituency or market for "Handicrafts" has expanded and grown over years. The raison d'etre for government sponsorship or supportive policy for "Handicrafts" industry may have evolved from the idea of promoting traditional arts and crafts with added objective generating employment in (generally rural) areas connected thereto. But this would definitely mean that the items sold as "Handicrafs" must be inexpensive. Whether or not the price is high or low is a relative issue to determine which there is no known or bright live benchmark. For such purposes as at hand, the price of the commodity, even otherwise, cannot be a decisive fact. On contrary, the cost factor involved in production of decorative items made by hand (which is the first and perhaps the more important test) is bound to be higher than mass produced machine-made commodities. The value of human labour, art and skill is appreciated the world over. It is common if the product he desires to acquire, and which appeals aesthetically to her or him, particularly decorative item, has been produced skillfully by use of hands."

19. The ratio of the above case, squarely applies to case in hand and as observed by Hon'ble Delhi High Court, high price cannot, rather ought not, become a negative factor. So, denial of exemption to decorative earthen pot made by the appellant on the ground that they are highly priced was wrong. The only criteria which lower authorities were supposed to adopt was whether items manufactured by appellant are made up of earth or clay or not and Ld. lower authorities wrongly added word ''decorative'' to earthen pots made by the appellant.

20. The Hon'ble Delhi High Court by way of illustration in above case, referred to various entries given in DVAT Act to bring home the point that a word cannot be added while interpreting an entry given in a schedule. The following observations of Hon'ble Delhi High Court in following paras will illustrate the point-

Para 21-

"*To illustrate the above, we may refer to entry at serial no. 117 in the third schedule of DVAT Act. It relates to ''imported textiles and fabrics". Necessarily, such textile and fabrics as are indigenously produced cannot take the cover of entry no. 117. Similarly, entry no. 22 in the first schedule to DVAT Act, which relates to sales which are exempt from such tax in terms of Section 6, concerns "Indigenous handmade musical instruments." Obviously, the benefit of such exemption cannot be extended to imported handmade musical instruments. The logic is simple. By adding the word "indigenous", the legislature has qualified the expression giving it a restrictive meaning.*

Para 22-

"We may add three more examples here. The entry nos. 12, 20 and 39, again in the first schedule to DVAT Act, relate to "earthen pot", "all bangles except those made of precious metals" and

"handmade safety matches" respectively. All these items are exempt from VAT. The way these commodities have been described in the said schedule, pots which are metallic, bangles which are made of precious metals like gold or silver, or safety matches produced with the help of machinery would not qualify for exemption under Section 6 of DVAT Act.

Para 23-

"*It, thus, clearly emerges that the expression "Handicrafts" used in entry no. 128 of the third schedule to DVAT Act must be construed in its plain lexical sense, without any colour being added by extraneous factors."*

21. In the case of M/s Shakti Industries, Rohtak Vs. Revisional Authority-cum-Dy. Excise and taxation Commissioner (Inspection) Rohtak, 2015-TIOL-1018, the question before Hon'ble Punjab and Haryana High Court was whether ''Hookas'' can be treated as ''Ferrous and Non-Ferrous metal utensils'' for the purpose of Haryana General Sales Tax Act and will be taxed @ 3%. Hon'ble High Court held that ''Hookas'' are ''utensils''. The following observations of the Hon'ble High Court are relevant for deciding the controversy in hand which are as follows:-

Para 12-

" A utensil as commonly understood and defined, is an implement, a tool, a receptacle, a vessel, a container etc. that may be used for various purposes, depending upon the nature of the utensil and the use to which it is put. The same utensil may be used in a kitchen, in a hotel, in a restaurant, to worship, for ceremonial purposes, in a dairy farm, for farming and various other purposes that may require the use of a utensil, as a tool, a receptacle, an instrument, a vessel or a container. A utensil is not necessarily confined to articles used in a kitchen. While interpreting words, used in a statute, a court shall make an attempt to discern legislative intent and if discernible, proceed to interpret the word accordingly. A perusal of the relevant entry reveals that it does not confine the word utensil to utensils used in a kitchen. If the State had intended to confine the meaning of the word "utensil" to articles used in kitchens, it could have easily added the words ''used in a kitchen'', after the word ''utensil''. The State was conscious that if it assigned such a restrictive meaning to the word 'utensil' it would lead to multiple complications and, therefore, used the generic term ''utensil'' without linking it to any particular utensil, except pressure cookers, or to the mode and manner of its user or to the place of its user. The word utensil, therefore, must necessarily be understood as a tool, a receptacle, a vessel, an instrument, or a container, than may be used as a tool, a receptacle, an instrument, a vessel or a container."

22. The ratio of above judgement squarely applies to the present appeal. We are fortified in our view, on the basis of above judgement. The Ld. Lower Authorities while deciding the issue whether ''Terracotta Pots'' being sold by the appellant were covered under exempted entry supposed to examine whether they are made up of earth or clay. The end use or value of these goods was not deciding factor whether they are exempted from VAT Tax or not.

23. It would be apposite to refer to judgement of Hon'ble jurisdictional Delhi High Court in the case of Commissioner, VAT Vs. Taneja Mines Pvt. Ltd. 2010- TIOL-681 where the question before Hon'ble High Court was whether ''religious pictures '' if mounted, cannot be said that they are no longer ''religious pictures''. Hon'ble Delhi High Court while deciding in favour of assessee held that ''religious pictures'' if mounted would remain religious pictures and would fall in the entry 45 of the first schedule of the DVAT Act and thus were exempted from tax. Hon'ble Delhi High Court further held that by mounting or framing these pictures intrinsic character

of them will not be changed. The following observations of Hon'ble Delhi High Court, while speaking through Hon'ble Justice Reva Khetarpal, J, are relevant which are as follows:-

Para 14-

"Thus, as far as the characterization of the goods in the instant case is concerned, we are inclined to agree with the findings rendered by the Tribunal that the frames of the religious pictures in the instant case are nothing more than accessories for the safe-keeping of the religious pictures and do not give any essential characteristics to the goods. Merely because the 'religious pictures' are mounted, it cannot be said that they are no longer religious pictures., Pictures of the divine, whether mounted, framed or otherwise would not change their intrinsic character by virtue of such mounting or framing."

Para 15-

So far as the other aspect is concerned, viz., the value of the nickel foils, it need not detain us any further in view of the law laid down by the, Supreme Court that an item should be classified according to its nature and use and not on the basis of the value of its accessories. It has gone to the extent to starting that merely because the value of the accessosries and other materials used is more than the value of the item itself is immaterial. Thus, in A. Nagaraiu Bros, (Supra) it was held that merely because the value of suitcases including the locks and other materials used in the suit cases is more than the value of the plastic, the VIP. Suitcases could not be called articles made of steel or of such other material. Similarly, in the case of A.V. Venkateshwaran, Collector of Customs, Bombay (Supra), the fact that the fountain-pens had nibs and caps plated with gold was held to be a matter of no consequence and it was held that it should not be overlooked that gold apart from being a source of value is a metal of malleability and its resistance to oxidation on contact with acids and chemicals was significant. Needless to state also that the use of gold in religious pictures which depict divinity is in consonance with the concept of the divine. The use of gold plated nickel foil would add ambience to the pictures and thereby increase its value in the aesthetic sense for a man of religious sentiment and theist views."

24. The next ground on which the impugned orders dated 21.10.2011

passed by Ld. OHA have been assailed is that appellant is in the business of selling essential oils namely Cedarwood E. Oil, Bitter Orange Oil and Peppermint Oil etc. but the Ld. OHA has treated them as Luxury Oils and accordingly held that they fall under unspecified category, hence liable to tax @12.5%.

25. In this regard, appellant's Ld. Counsel submitted that the oils manufactured by appellant are basically used in soap perfumes, household sprays, floor polishes and insecticides (so far as Cedarwood E. Oil is concerned) while Bitter Orange Oils is used in perfume and as a flavouring agent and Peppermint Oil is used as tea and for flavouring Ice cream, confectionary, Chewing gum-and toothpaste. It is evident from uses of these oils sold by the appellant, that they are not for luxurious purposes. Rather they are used in the items which are required for daily use purposes like soap, tea etc. By no stretch of imagination, these can be covered under the ambit of luxurious items.In this regard he also drew attention of the Tribunal towards determination order no. 21/CDVAT/2005 dated 06.03.2006 passed by Ld. Commissioner in the matter of International Flavours and Fragrances India Ltd. according to which the rate of tax on flavouring essences was determined @4%.

26. On the basis of above arguments, appellant's Ld. Counsel submitted that essential oil being sold by appellant were rightly taxed @4% by appellant. The impugned orders passed by Ld. OHA are contrary to law, hence liable to be set aside.

27. Before proceeding further, it would be appropriate to explain the meaning of ''essential oil''. Appellant has claimed that they are essential oils. Now the question arises what are ''essential oils''? According to Wikipedia Encyclopedia "An essential oil is a concentrated hydrophobic liquid containing volatile aroma compounds from plants. Essential oils are also known as volatile oils, ethereal oils, aetherolea, or simply as the oil of the plant from which they were extracted, such as oil of clove. An oil is ''essential'' in the sense that it contains the ''essence of'' the plant' fragrance-the characteristic fragrance of the plant from which it is derived."

28. It is clear from the bare perusal of above definition of ''essential oils'' that they are derived from plants, in other words, they are essences of plants. Appellant has claimed that oils being produced and sold by him are ''essential oils'' but during the course of arguments, appellant's Ld. Counsel, has not mentioned the source of these oils rather he has emphasized on various uses of these oils. Similarly, Ld. OHA in the impugned orders has treated them as ''luxury oils'' contrary to appellant's argument but Ld. OHA

has not mentioned any reason for placing these oils in the category of ''luxury oils''. What was the basis for treating these oils as luxury oil has not been disclosed by Ld. OHA.

29. Appellant's Ld. Counsel, during the course of arguments, in the same vein, submitted that they are covered by determination order dated 06.03.2006 passed by Ld. Commissioner in the matter of International Flavours and Fragrances India Ltd. (Supra) hence, liable to be taxed @4%.

30. Before proceeding further it would be appropriate to reproduce the question which was moved for determination by the applicant in the above case which is as follows-

> "Whether "Flavouring Essences" are to be classified as Industrial Inputs taxable @4% under Delhi Value Added Tax Act as the same was classified under "Sl. No. 2065 Perfumery and Essences, Essential Oils, Resinoids, Perfumery Compounds" under the erstwhile Delhi Sales Tax Act/- 1975 vide Circular No. 44 of 2000-01 in continuation of Circular No. 26 of 1999-2000 issued by the Commissioner, Sales Tax, Delhi?"

31. On the above application for determination the then Ld. Commissioner passed the following orders –

> "I have heard the arguments advanced before this Court from both sides as well as perused the record of the case. The relevant Entry No. 121 reading as "Industrial Perfumes and its concentrates (HSN 33.02)" as it stands on date in the Third Schedule of the DVAT Act has also been seen. The written submissions received from the applicant in the dak have also been taken note of. It is found that the HSN Code No. 33.02 has since been mentioned in Entry No. 121 of the Third Schedule with effect from 08.08.05. It clearly shows the intention behind adding HSN Code, had the intention been only to cover the items "Industrial Perfumes and its concentrates there was no need to add any additional HSN Code (which in a way itself emphasized and gives direction the way entry should be interpreted). The four digit entry contained in the bracket makes it clear that with other items covered by this Entry "Flavouring Essences" are also covered under the Entry "Industrial perfumes and its concentrates" and attract tax @4%."

32. It is clear from the above determination orders passed by Ld. Commissioner that scope of entry no. 121 of the third schedule relating

to “Industrial Perfumes and its concentrates” was further extended and ‘flavouring essences’ were also placed in this entry but so far as present appeals are concerned, appellant is claiming that the item produced by him are ‘essential oils’ which are used for various purposes. So first appellant has to prove that the oils being produced by him are ‘’essential oils’’ and source of them is plants in which appellant has failed. For claiming benefit of determination order dated 06.03.2006 appellant has first to prove that oils being produced by him are essential oils and they are being used as flavouring essences then only, he can claim benefit of above determination order. The Ld. lower authorities have not given any reasoning for treating oils in question as ‘’luxury oils’’ hence, so far as Ld. OHA’s orders regarding ‘’essential oils’’ are concerned, on the basis of above discussion they are quashed and in this regard matter is remanded back to the concerned VATO to decide the issue of ‘’essential oils’’ afresh in the light of above discussion and give a definite reasoning and finding for treating these oils in the category of ‘’essential oils’’ or luxury oils. This issue is decided accordingly.

33. The appellant has assailed the impugned orders dated 21.10.2011 passed by Ld. OHA also on the ground that ‘’Bamboo Articles’’ being produced by the appellant have also been wrongly taxed @12.5% by placing them in unspecified category of any schedule. In this regard, appellant’s Ld Counsel submitted that Bamboo and Bamboo mating are covered under entry 8 and 140 of Schedule 3rd of DVAT Act respectively. Further, articles such as trays, basket etc are nothing but a form of moulded Bamboo mating only. Accordingly, these are to be classified under the term ‘Bamboo mating’ only.

34. In this regard appellant’s Ld. Counsel drew our attention towards decision of Hon’ble Karnataka High Court in case of Mahabir Enterprises Vs. Commissioner, CTO (2000) 118 STC 0155 where the court described the meaning of word ‘product’, which is as follows:-

> “Product as understood by any layman accordingly to dictates of common sense could mean a commodity or a thing which had come into existence either naturally or as a result of effort and work.”

35. Referring to above definition, appellant’s Ld. Counsel submitted that items made by appellant are also sufficiently covered under the ambit of term ‘product’ of bamboo material. Thus these are to be classified under the entry no. 08 and 140 of DVAT Act.

36. The Ld. OHA while passing the impugned orders only on the ground that Bamboo made items does not find any mention in 3rd schedule, hence not covered under 4% tax category. No reasoning has been given for denying the fact that they are not covered under the head Bamboo mating. In this regard, we agree with the submissions of appellant's Ld. Counsel that items produced by appellant are made up of Bamboo mating. They have been moulded into various shapes by human intervention and in the process of production they have not lost their intrinsic character of Bamboo, hence they can be safely placed under the entry 140 of schedule 3rd and accordingly, liable to tax, @4%. In our view, appellant has rightly discharged its tax liability and assessing officer has wrongly taxed them @12.5%.

37. Lastly, appellant's Ld. Counsel also assailed the levy of tax on articles made up of silk being produced by him @12.5%. In this regard appellant's Ld. Counsel drew attention of this Tribunal towards entry 164 of 3rd schedule which is as follows:-

> "All other varieties of textile fabrics and made ups as are specifically not covered by any other entry of any of the schedule to the Act."

38. Appellant's Ld. Counsel further referring to Textiles Committee Act, 1963 explained the meaning of word ''textile'', which means any fabric or cloth or yarn or garment or any other article under wholly or in part of (i) cotton; or (ii) wool; or (iii) silk; or (iv) artificial silk or other fibre; and includes fibre and submitted that silk items being produced by appellant come under entry 164 as all other varieties of textiles which are not covered anywhere else and secondly, products being manufactured by appellant are textile.

39. On conjoint reading of above entry and definition of word 'textile' it is amply clear that silk items being produced by appellant are textiles and as they have not been mentioned in any other entry so these made ups of silk are covered under entry 164 of 3rd schedule. The Ld. lower authorities have taxed them @ 12.5% while they are liable to be taxed @ 4%. Hence, impugned orders passed in this regard are set aside accordingly.

40. The appellant's Ld. Counsel has also assailed the impugned order on the ground that the law is settled that State is entitled to tax what is legitimately due to it and lower authorities have wrongly taxed the disputed items at the higher rate. Hence, impugned orders are liable to be set aside. In this regard appellant's Ld. Counsel drew our attention to celebrated judgements of our jurisdictional Delhi High Court in the case of M/s Kirloskar Electric Co. (1991) 83 STC 485 and Escorts Tractors Ltd. Vs.

Union of India 1993 (64) E.T.T. 18. In the former case Hon'ble Delhi High Court observed as follows:-

> "*When the Sales Tax Act provides that a deduction can be claimed in respect of sales effected in favor of registered dealers then the deduction should be allowed. The proof in support of claiming the deduction is the production of the St. I forms. Even though the St. I forms were produced after the assessment had been complied, it will not be fair or just not to allow the legitimate deduction. A citizen should be asked to pay only that amount of tax which is legitimating due from him."*

41. In our considered view, ratio of above cases squarely applies to the facts of present appeals. The revenue is entitled to tax which is legally due to it. Before closing our discussion, it would be appropriate to reproduce following observations of Hon'ble Supreme Court in the case of Dunlop India Limited Vs. Union of India 1983 E.L.T. 1566 in which Hon'ble Supreme Court held that *''when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will* be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.''

42. On the basis of above discussion, we hereby set aside the impugned orders dated 21.10.2011 passed by Ld. OHA and so far as essential oils being produced by appellant, matter is remanded back to concerned VATO to decide the controversy in the light of above discussion and after giving an opportunity of hearing to the appellant. Appellant is directed to appear before the concerned VATO on 07.06.2017 who shall dispose of the matter as soon as possible preferably within a period of one month.

43. Order pronounced in the open court.

44. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

45. File be consigned to record room.

46.

47.

48. Opening his arguments appellant's Ld. Counsel, submitted that Ld. OHA had erred in law and facts while passing the impugned orders as

earthen pots are exempted items as per sl.No.12 of first schedule of DVAT Act. In this regard, while passing the impugned orders Ld.OHA observed as following :-

> "As regard the items i.e. decorative other pots, its concerned, I am of the opinion that the items sold by the dealer is not covered under the entry Sr. No.12 of the first schedule. In my opinion, the earthen pot in the first schedule refers to the item "Pot, which is made of earth,": which is used for the storage of water etc. The entry does not cover an item like decorative earthen pot"

In fact the item sold by the dealer is not even decorative earthen pot and the same should be categorized and item of decoration in the shape of an earthen pot. The use of the item placed in first schedule and use of the item sold by dealer is also different. An item of decoration may be in many shapes and merely by the shape, the item will not be covered under the " first schedule". Therefore, I hold that the decorative items sold by the dealer fall under unspecified category, attracting tax @ 12.5%.

49. Referring to above observations appellant Ld. Counsel submitted that Ld. OHA has upheld the demand on the ground that since the items sold by the appellant are not used by the common man for the basic purpose like storage of water etc., these cannot be equated with earthen pots as specified under entry No. 12 of the schedule 1. Ld.OHA also alleged that nearly on basis of shape item will not be covered under first schedule. In this regard, appellant's Ld. Counsel submitted that the OHA passed these orders with a pre determine state of mind. Referring to entry No.12 of first schedule appellant's Ld. Counsel submitted that it is amply clear from the aforesaid entry that such entry exempts "earthen pots" from the leviability of DVAT .According to Appellant Ld. Counsel " earthen pot means a pot made up of earth or clay". Thus as per above entry it is amply cleared that a pot which is made up of earth or clay is exempted from tax under DVAT Act. Appellant further submitted that exemption has been granted on the basis of material used for the manufacture of pots not on the basis of the end use of the pots or shape of pots or anything else. A pot which is made up of clay is exempted from payment of VAT, no matter for what purpose, it is being used.

50. In the instant case appellant is also selling pots made up of clay and availing exemption as per the above entry. However, the Assessing Authority denied the exemption on the ground that such pots are not for use by a common man whereas nothing has been specified about the end use of the pot in the entry. Ld. OHA denied the exemption on the

vague ground that entry does not cover decorative earthen pots. While in the above entry only earthen pots have been written. It is not mentioned anywhere that this entry does not cover decorative earthen pots. Thus Ld. OHA cannot add words from its own only for the purpose of levying tax.

51. Ld. Assessing Authority have also denied the exemption on the ground that appellant is selling such pots by the various means and at the prices in the range of Rs.1500- Rs. 12800/-. According to appellant in this entry exemption has been granted to pots based on the material of which these are made up of. Thus, a pot which is made up of earth or clay is exempted, no matter by which name and at which price such pot is being sold.

52. Thus the interpretation made by Ld.OHA is against the provisions of DVAT Act. Both lower authorities have arbitrarily interpreted the provisions by adding words from there side . It is a settled law that where language of the statute is clear and unambiguous , nothing can be read in to it by the implication and the intention of the legislature has to be gathered from the language used.

53. In the instant case, statute is clear and unambiguous that earthen pots are exempted from payment of VAT but assessing authority taxed such pots by using vague interpretation that these should also be for used by common man for storing water, pickles, these are used at decorative items etc. whereas nothing has been specified about the use of the earthen pots in such entry. Accordingly, the demand created on the appellant is illegal and against the intention of legislature. In support of these arguments, appellant's Ld. counsel has referred the cases of Dayal Singh Vs. Union of India AIR 2003 SC 1140, Nassiruddin and others Vs Sita Ram Aggarwal (2003) 2scc 577and Mathuram Agraival's case.

54. On the basis of above submissions, appellant's Ld. Counsel submitted that it is amplyclear that earthen pot is exempted from payment of VAT. Further the name by which it is sold, its end use, its shape or any other factor is not required to check the availability of exemption. Therefore, demand created by the Assessing Authority is illegal and bad in law, accordingly it should be dropped.

55. Appellant's Ld. Counsel further submitted that in the impugned order, it has been alleged that since the oils sold by the appellant are luxury oils, these fall under unspecified category. Accordingly, they are liable to tax @ 12.5%. In this regard appellant's Ld. Counsel submitted about the nature of oils sold by the petitioner and argued that oils sold by the appellant

are not for luxurious purposes. Rather they are used in the items which are required for daily use purposes like soap, tea etc. and by no stretch of imagination, these can be covered under the ambit of luxurious items. Further, the oils sold by the appellant are used as flavouring essence in various products. Moreover the rate of tax on flavouring essences was determined @ 4% vide office order no. 21/CDVAT/2005 dated 06.03.2006 in the matter of International Flavours and Fragrances India Ltd.

56. Appellant's Ld. Counsel further pointed out that Ld. OHA has not referred to above determination order in his orders. From bare perusal of above determination order it is clear that flavouring essences are taxable @4%. On the basis of above submissions it is submitted that appellant has rightly discharged its VAT liability as per the provisions of DVAT Act.

57. Appellant's Ld. Counsel further submitted that Ld. OHA has levied tax on the bamboo articles on the ground that these are not specified anywhere under schedules to DVAT Act. Accordingly, these are to be taxed @12.5%. In this regard Appellant's Ld. Counsel submitted that Bamboo and Bamboo Mating are covered under Entry No. 8 & 140 or schedule III of DVAT Act respectively. Further articles such as tray, baskets etc. are nothing but a form of moulded Bamboo mating only. Accordingly, these are to be classified under the term Bamboo 'mating only'.

58. In this regard, to give force to his arguments appellant's Ld. Counsel referred the case of Hon'ble Karnataka High Court in the case of Mahavir Enterprises Vs. Commissioner, CTO (2000) 11 STC 0155 where the court described the meaning of 'Product' and submitted that items made by the petitioner are also sufficiently covered under the ambit of term 'product'. Thus, these are to be classified under the entry No. 8 & 140 of schedule III of DVAT Act.

59. Appellant's Ld. Counsel further argued that the Ld. OHA has levied tax on the articles made up of silk on the ground that same are not covered under any entry in DVAT schedules. Accordingly, these are to be taxed @ 12.5%. In this regard appellant's Ld. counsel drew attention towards entry no. 164 of schedule III of DVAT Act which reads as under:-

> "All other varieties of textile fabrics and made ups as are specifically not covered by any other entry of any of the schedules to the Act."

60. According to appellant's Ld. Counsel, as per the above entry, all other variety of textile which are not covered anywhere else are covered hereunder this entry.

61. Appellant's Ld. Counsel also read the definition of 'textile' as given in Textiles Committee Act, 1963 and submitted that it is clear from the definition that textile includes all kinds of articles made up of cotton, wool or silk etc. Accordingly, in the instant case, silk articles made by the assessee will sufficiently be covered under this entry as these are not specified anywhere else. Consequently, these are liable to be taxed @ 4%. Thus, demand created by Ld. OHA is against the provision of DVAT Act.

62. Order pronounced in the open court.

63. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

64. File be consigned to record room.

[2017] 55 DSTC 139 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Diwan Chand: Member (A) and M. S. Wadhwa: Member (J)

APPEAL NO. 04 – 13/ ATVAT/17 – 18

M/s Navin Infrastructure Pvt. Ltd ... Appellant
B – 249, Greater Kailash, Part – I,
New Delhi-110048

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 22.05.2017

ENTERTAINMENT OF OBJECTION– SECTION 74 (1) 3RD PROVISO OF DVAT ACT, 2004 – OHA DIRECTED APPELLANT TO DEPOSIT 20% OF DISPUTED AMOUNT OF TAX AND INTEREST I.E. RS. 7,90,56,436/- AND 20% WOULD BE RS. 1,58,11,287/- OHA DIRECTED TO DEPOSIT RS. 2,76,71,074/- WHICH IS WRONG – NO REASON GIVEN IN ORDER UNDER SECTION 74 (1) BY OHA – NON – RECORDING OF REASONS ITSELF IS A BREACH OF NATURAL JUSTICE – QUASI JUDICIAL AUTHORITIES ARE REQUIRED TO PASS REASONED, SPEAKING ORDERS – BEDI AGENCIES 52/ DSTC/J – 276/ DEL.

Held

In the above judgments, we reach the irresistible conclusion that impugned orders dated 20.03.17 are liable to be set aside, hence, they are set aside and present appeals are allowed accordingly. The matter is remanded back to the concerned Ld. OHA with the direction to pass order

afresh, in the light of the provisions of law and the law as laid down by the courts after giving an opportunity of hearing to appellant.

Speaking order

There is a vital difference between the conclusions and reasons. Reasons are the links between the materials on which conclusions are based. The actual conclusion should disclose how the mind is applied to the subject matter for a decision and should reveal a rational nexus between the facts considered and the conclusion reached

Present for the Appellant : Sh. B. Sangal, Advocate

Present for the Respondent : Sh. C. M. Sharma,Advocate

Cases referred:

1. Bedi Agencies Vs. Commissioner Value Added Tax [52 DSTC J – 276 (Del)]
2. Camphor & Allied Products Ltd Vs. The Additional Revising Authority Sales Tax, Bareilly and another 1979 sales tax cases 107

Order

1. The Instant appeals have been filed against the Impugned orders dated 20.03.2017, passed by LD. Addl. Commissioner, hereinafter called Objection Hearing Authority (for brevity OHA), who in exercise of powers as given in proviso to section 74(1), directed appellant to deposit the amount of Rs. 2,76,71,074/- in objection against assessment orders passed by Ld. VATO.

2. The factual matrix, of the present appeals is that the appellant company is registered with VATO, Ward 88, having TIN 07740443452 and is required to File quarterly returns which are being filed regularly and tax due as per returns is accordingly deposited.

3. The appellant company has been subject to default assessment of tax, and penalty. u/s 32 and u/s 33 r/w section 86(10) of DVAT Act respectively vide assessment orders dated 28.11.16, for five quarters of the years 2013-14, 2014-15 and 2015-16 by way of disallowing Input Tax Credit (in short ITC) on the, basis of survey conducted on 07.01.16 by the Enforcement Branch. The ITC has been disallowed by the AVTO in different quarters of the years 2013-14, 2014-15 and 2015-16 to different registered dealers on common allegations of the nature that the appellant company is making purchases from bogus/suspicious/cancelled dealers,

though the sales are made by the appellant company to some of the reputed dealers.

4. The AVATO has further alleged that transactions are made by issuing bills to the intending purchasers without any transfer of goods which results in huge loss of revenue to the Exchequer. In this manner, the Ld AVATO has raised the demands of tax, interest and penalty of different quarters of the year 2013-14, 2014-15 and 2015-16 as given below;-

Year	Quarter	Amount of Tax	Amount of Interest	Total of Tax & Intt.	Penalty
2013-14	3rd Qr.	1,48,32,752/-	63,51,669/-	2,11,84,421/-	1,48,32,752/-
	4th Qr.	2,24,25,045/-	87,73,415/-	3,11,98,460/-	2,24,25,045/-
2014-15	2nd Qr.	7,61,886/-	2,40,777/-	10,02,663/-	7,61,886/-
	3rd Qr.	76,53,839/-	21,29,445/-	97,83,284/-	76,53,839/-
2015-16	2nd Qr.	1,36,25,416/-	22,62,192/-	1,58,87,608/-	1,36,25,416/-
			Total	7,90,56,436/-	5,92,98,938/-

5. Against these assessment orders, appellant filed ten objections before the Ld. OHA, five online and five manually, On receipt of notice from the Office of Id. OHA, appellant made appearance and on hearing the appellant, the impunged orders dated 20.03.17 were passed directly appellant company to deposit 20% of the disputed amount of tax and Interest i.e Rs.7,90,56,430/- and 20% thereof would be Rs.1,58,11,287/-. However, Ld. OHA directed the appellant company to deposit a sum of Rs. 2,76,71,074/-. Which is apparently wrong.

6. Against these orders dated 20.03.17 passed by Ld, OHA appellant has filed present appeals before this Tribunal alleging that the order passed by the Ld. are without jurisdiction and has assailed the impugned orders on various grounds, which are follows:

i) That the orders of the authorities below are wrong in law and on facts of the case.

ii) That the impugned orders dated 20.03.17 passed by the Ld. OHA, are without jurisdiction in as much as he has failed to comply with the provisions of 3rd proviso to section 74(1) of DVAT Act was only after issue of such a notice specifying them as to what is the reasonable amount, the Id. OHA could assume jurisdiction to prescribe condition for entertainment of objections for disposal on merit.

iii) That the impugned order suffers from many illegalities and mistakes and even the amount disputed by the appellant company in the Objections filed by him has not been given.

iv) That the Ld OHA has passed a no peaking order in a mechanical manner which is arbitrary and without any basis or reason to justify for prescribing condition to deposit 20% of the amount of tax and Interest in dispute.

v) That taking into consideration, entirety of facts and circumstances of the case, the impugned orders dated 20.03.17 deemed to be quashed and Ld. OHA reserves to be directed to hear and dispose off the objections filed before him on merits without prescribing any condition.

7. Heard to Mr. Balram Sangal on behalf of the appellant and Mr. CM Sharma on behalf of the Revenue and perused the file on the basis of which these appeals are being disposed off as follow.

8. Before proceeding further, it would be appropriate to reproduce relevant portion of sections 74 DVAT Act, which relates to objections and which is as follows:-

Section 74. Objections:

Any person who is dissatisfied with -

An assessment made under this Act (including an assessment under section 33 of this Act) or

(a) Any other order or decision made under this Act;

May make an objection against such assessment, or order or decision, as the case may be to the Commissioner;

Provided .....

Provided .....

Provided also that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained.

Provided .....

Provided .....

Provided .....

9. In exercise of powers as given above in proviso 3rd Of section 74 of DVAT Act, Ld. OHA directed appellant vide orders dated 20.03.17 to deposit 20% of the disputed amount of tax and interest. Appellant was further directed to deposit Rs. 2,76,71,074/- as a precondition for hearing objections on merit. According to appellant 20% amount on the disputed liability comes to Rs. 1,58,11,287/- and not Rs. 2,76,71,074/- as directed by the Ld. OHA, Appellant has also assailed be impugned orders on the ground that they are non-speaking orders passed mechanically without application of mind, hence, liable to be set aside. Now the Question arises, whether in the facts and circumstances of the present appeals, the amount directed to be deposited by the appellant was reasonable amount?

10. Similar issues arose before Hon'ble Delhi High Court in the use of Bedi Agencies Vs. Commissioner Value Added Tax. and Old World Hospitality Pvt. Ltd. Vs. Commissioner Value Added Tax in which orders were passed on 04,07.2012, so before proceeding further it would be in the interest of justice to reproduce the observations of Hon'ble Deihi High Court on this issue in these cases.

11. In the above mentioned Bedi Agencies case Hon'ble Deihi High Court made the fallowing observations:

> "The expression 'reasonable' in the opinion of this Court impels the Objection Hearing Authority to spell out the reason in an objective manner as to why it considered a particular amount or deposit to be reasonable. This Court also noticed that the objector/petitioner in this case had relied upon previous ruling of the Supreme Court in Hoosein Kasam Dada case. However, the Objection Hearing Authority has not made any analysis as to the applicability of that decision or drawn a distinction from it. Furthermore, the impugned order is improper as no reason for 20% deposit has been justified.

12. Similarly, in the case of Old World Hospitality Pvt. Ltd. Hon'ble Delhi High Court on similar type of issue held as follows:

> "We think the impugned order does not spell out any reason much less why the sum of Rs. 15000/- is deemed reasonable as a condition precedent made by the petitioner. We are of the opinion that the legislative intent for introducing amendment w.e.f. 01.10.2011 through the third proviso that the concerned authority i.e. Assessing office or the commissioner is to apply his mind to the facts of the case and in appropriate cases, spell out why a certain amount is deemed reasonable, although this needs to be

elaborated, ye the contention that the order must spell out the reasons why the sum is adjudged as pre-condition for consideration of the appeal should nevertheless be given. In the present case the impugned order does not seem to be proper. The commissioner even goes to the extent of expressing that it is not necessary to go into the merit of the case and yet passed this kind of order.

13. In Charanjit Singh Nandrayog, Hon'ble Bombay High Court said as follow:

"Needless to mention that in absence of the reasons in the order, it is not possible for the Higher Court to read the mond the Judge passing the impugned order. Non-recording of reasons itself is a breach of principles of natural justice."

14. Before proceeding further, it would also be appropriate to reproduce following parts of the impugned orders dated 20.03.17 passed by Ld. OHA which are as follows:

"I have heard the brief arguments of the counsel of the firm. However, without going into the merits of the case and without prejudice to the final outcome of the case, I deem it necessary to prescribe a precondition subject to deposit of 20% of the disputed amount of tax/interest within ten days.

The case shall be heard on merits subject the deposit of said amount. Accordingly, the objector is directed to deposit the amount of Rs. 2,76,71074/- (Rs. Two Crore Seventy Six Lakh Seventy One Thousand Seventy Four only) as Precondition for hearing objections on merit."

15.It is amply dear from the bare perusal of the impugned orders that no reason why appellant was directed to deposit 20% of the disputed amount of tax and interest has not been divulged, Quasi judicial authorities have also been mandated to pass reasoned, speaking orders, No doubt, it is a duty of Tax Authorities to prevent evasion of tax but under the garb of exercise of powers they cannot be permitted to pass whimsical nonjudicial orders without application of mind. As observed by Hon'ble Bombay High Court in the case of Charanjit Singh Nandrayog (Supra) "that in the absence of the reasons in the order, it is not possible for the Higher Court to read the mind of the Judge passing the impugned order."

16. Before concluding, it is appropriate to reproduce following para of judgment of Honble Allahabad High Court in the case of Camphor & Allied

Products Ltd Vs The Additional Revising Authority, Sales Tax, Bareilly and Another 1979 Sales Tax cases 107, which is as follows:-

> "There is a vital difference between the conclusions and reasons. Reasons are the links between the material on which conclusions are based. The actual conclusion should disclose how the mind is applied to the subject matter for a decision and should reveal a rational nexus between the facts considered and the conclusion reached."

17. In view of the foregoing discussion and in the light of the above judgments, we reach the Irresistible conclusion that impugned orders dated 20.03.17 are liable to be set aside, hence, they are set aside and present appeals are allowed accordingly. The matter is remanded back to the concerned Ld. OHA with the direction to pass order afresh, in the light of the provisions of law and the law as laid down by the Courts of giving an opportunity of hearing to appellant. Appellant is directed to appear before the concerned OHA on 05.06.2017.

18. Order pronounced in the open court.

19. Copies of this order shall be served on both the parties and the proof of service be brought on the record by the Registry.

20. File be consigned to record room.

[2017] 55 DSTC 145 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI

Diwan Chand: Member (A) and M. S. Wadhwa: Member (J)

Appeal No. 01-03/ATVAT/17-18

M/s. Fivebro International Pvt. Ltd. ... Appellant
33, Hanuman Road, Connaught Place
New Delhi-110 001.

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 20 June, 2017

ENTRIES IN SCHEDULE: -DELHI VALUE ADDED TAX- THE PRODUCT NAMELY RO/UF MEMBRANE, BEING PRODUCED BY THE APPELLANT IS NOT COVERED

UNDER ENTRY NO.86 (XXII) AND ENTRY NO.86 (XXVIII) OF THE 3RD SCHEDULE OF DVAT ACT.

Facts of the case

The appellant is engaged in the business of supplying of industrial parts and machinery parts of water treatment and purifier plants. That the Ld. AVATO issued a notice u/s 59(2) DVAT Act and the same was duly complied by the appellant by submitting all the necessary documents. The Ld. AVATO taxed product of dealer as a RO/UF and water purifier @12.5% instead of 5% while appellant was producing industrial goods as per provision of DVAT Act. Against assessment orders appellant filed objections before the Ld. Spl. Commissioner (OHA), before whom all the facts were produced even then Ld. Spl. Commissioner totally brushed aside the facts and documents and confirmed the orders of Ld. AVATO. Still aggrieved by the impugned orders dated 18.01.17 passed by Ld. OHA, the appellant has assailed the impugned orders before the Tribunal.

Held

On the basis of discussion, we are of the considered view that the product in question being manufactured by appellant is not covered under Entry 86 (XXII) or (XXVIII) of 3rd Schedule and it was rightly decided by the lower authorities that it is covered under Determination Order No.378 dated 22.06.15 passed by Ld. Commissioner, VAT and liable to be taxed @ 12.5% as per Section 4(1)(e) of DVAT Act. Accordingly, present appeals are disallowed and dismissed.

Present for Appellant	:	Shri Satish Kumar Dixit, Advocate
Present for Respondent	:	Shri S.B. Jain, Advocate

ORDER

1. The appellant has filed these three appeals against the impugned orders dated 18.01.17 passed by Ld. Spl. Commissioner-I, hereinafter called Objection Hearing Authority (in short OHA) who vide these orders upheld the assessment orders dated 19.10.15 of tax and interest u/s 32 DVAT Act passed by Ld AVATO (Ward-84) for all the four quarters of Assessment years 2011-12, 2012-13 and 2014-15. As common question of law and facts are involved in these appeals, hence they are being disposed off by following common orders.

2. The brief facts, relevant for disposal of these appeals are that the dealer is a private limited company having Tin No.07900305430. The

appellant is engaged in the business of supplying of industrial parts and machinery parts of water treatment and purifier plants.

3. That the Ld. AVATO issued a notice u/s 59(2) DVAT Act and the same was duly complied by the appellant by submitting all the necessary documents.

4. That the Ld. AVATO taxed product of dealer as a RO/UF and water purifier @ 12.5% instead of 5% while appellant was producing industrial goods as per provision of DVAT Act.

5. That the Ld. AVATO observed that as per Commissioner's Determination Order No.378/CDVAT/2014/375 dated 22.06.15 in the case of M/s Arvind Invisole Pvt. Ltd., appellant's product is covered in the above Determination order whereas the factual position is totally ignored by AVATO while deciding appellants case. The dealer is engaged in the business of supplying of machinery parts, which are used for supply of water treatment plants and water purifier plants. Such parts are utilized in industrial process in various industries as machinery for these industries. These industries include Tea Industry, Food & Food Processing Industries, Flour Mills and Sugar Mills etc.

6. That the membrane which are supplied by the dealer are used in the industries as a machinery parts and comes under the entry no.86 as a "capital goods" as specified in such entry no. as machinery and its parts.

7. The allegation of the Ld. AVATO that the dealer is engaged in the business of RO/UF Membrane and is covered under Determination Order No. 378 dated 22.06.15 is denied as dealer's items are industrial machinery parts and not RO/UF.

8. That the observation of Ld. AVATO that the product of dealer RO/UF are not covered in entry no.86 (XXII) and entry no.86 (XXVIII) of the Schedule-III of the DVAT Act is not based on facts as the Ld. AVATO has misunderstood the product and it is hereby stated that the dealer is not dealing in RO/UF.

9. Against assessment orders appellant filed objections before the Ld. Spl. Commissioner, before whom all the facts were produced even then Ld. Spl. Commissioner totally brushed aside the facts and documents and confirmed the orders of Ld. AVATO.

10. That the dealer had also produced their product physically before the Spl. Commissioner. But Ld. Spl. Commissioner not understood the

difference between an industrial part and RO. The product of the dealer (Membrane) cannot be used on its own and is not a residential water purifier product. It is a machinery part used in almost all industries in water treatment.

11. Still aggrieved by the impugned orders dated 18.01.17 passed by Ld. OHA, the appellant has assailed the impugned orders before this Tribunal on following among other grounds:-

1. That the Ld. OHA has erred in confirming the order of AVATO without considering the facts and circumstances of the present case.

2. That the Ld. OHA has erred in treating the items sold by the appellant under entry no.86 as "capital goods". The Ld. OHA has not considered the facts and circumstances of the case and details and documents produced during the proceedings.

3. That the Ld. OHA has erred in confirming the order of AVTO without considering the judgment/orders of Hon'ble Courts.

12. On the basis of above facts and grounds of appeals it has been prayed that impugned order dated 18.01.17, passed by Ld. OHA, affirming the orders dated 19.01.15 of assessment of tax and interest of AVATO be set aside and present appeals be allowed.

13. Heard to Ld. Counsel for appellant Mr. Satish Kumar Dixit and Mr. S.B. Jain on behalf of Revenue and perused the file, on the basis of which present appeals are being disposed of as follow.

14. These appeals pertain to financial year 2011-12, 2012-13 and 2014-15. Ld. AVATO vide orders dated 19.10.15 imposed tax and interest to the tune of Rs.17,01,0569/-, 18792015/- and 1612407/- respectively in the above financial years and which was affirmed by Ld. OHA vide impugned order dated 18.01.17. The short controversy in the present appeals is whether product namely RO/UF Membrane, being produced by the appellant is covered under entry no.86 (XXII) and entry no.86 (XXVIII) of the 3rd Schedule of DVAT Act or not. Ld. AVATO in the light of the Determination Order No.378/CDVAT/2014/375 dated 22.06.15 passed by Ld. Commissioner, VAT, Delhi, held that they are not covered by above entries hence liable to be taxed @ 12.5% as per section 4(1) (e) of the DVAT Act. Before proceeding further, it would be appropriate to reproduce the relevant entry which is as follows:-

Sl. No.	COMMODITY
86	11.05.2005
	Capital goods as specified
(xxii)	Waste treatment plant and pollution control equipment manufacturing machinery
(xxviii)	Spare parts, accessories and components of the plant and machinery specified in items (i) to (xxvii) above.

15. First of all, it would be relevant to know what product appellant is manufacturing. As per para-6 of the appeal, the dealer is engaged in the business of supplying of machinery parts which are used for supplying of water treatment plant and water purifier plant while in para-7 appellant states that the membrane which are supplied by the dealer are used in industries as a machinery parts and comes under the Entry No.86 of 3rd Schedule. On conjoint reading of these paras, it becomes clear that appellant is manufacturing membranes which are used in the water treatment plant and water purifier plant. The appellant had tried to place his product in the category of "capital goods" as specified in Entry No.86 (XXII) or Entry No.86 (XXVIII). On bare reading of these entries, it is clear that under Entry 86 (XXII) machinery which is used in manufacturing of waste treatment plant and pollution control equipment are covered under this entry whereas under entry 86 (XXVIII) spare parts, accessories and components of the plant and machinery which are specified in item (I) (XXVII) are covered. It is clear from these entries that appellant is not manufacturing that machinery which manufactures waste treatment plant and pollution control equipment and secondly the membrane which is being manufactured by the appellant is not a spare part or accessory or component of such type of machinery which manufactures waste treatment plant and pollution control equipment. So, it is clear that the product "membrane" which is being manufactured by appellant is not covered under Entry-86 (XXII) or (XXVIII).

16. Appellant has filed certificate of testing of Institute of Science & Technology which is working under aegis of Jawahar Nehru Technological University, Hyderabad. According to this certificate, Reverse Osmosis Membrane with commercial name Dow Filmtech Membrane model BW-30-365 is tested for its characteristics and is found to purify any type of water such as brackish water. It has been stated in the report that this membrane is used for filtration of liquids and the conclusion of the report is that it is not possible to build or functioning of the Reverse Osmosis Plant without a Reverse Osmosis Membrane.

17. The Ld. VATO has said that the dealer is engaged in the business of RO//UF Membrane and is covered under Determination Order No.378

dated 22.06.15 passed by Ld. Commissioner, VAT. This finding itself of Ld. VATO is supported by the testing report filed by the appellant in support of his appeal.

18. To give force to his arguments, Appellant's Ld. Counsel has also referred to advance ruling dated 22.01.14 of the Commercial Tax Department of Andhra Pradesh and the order of Ld. Dy. Commissioner, Hyderabad passed on the basis of this advance ruling. We have gone through these orders and are of considered view that entry in DVAT Act is different from the entry under which the product in question is covered in Andhra Pradesh.

19. On the basis of above discussion, we are of the considered view that the product in question being manufactured by appellant is not covered under Entry 86 (XXII) or (XXVIII) of 3rd Schedule and it was rightly decided by the lower authorities that it is covered under Determination Order No.378 dated 22.06.15 passed by Ld. Commissioner, VAT and liable to be taxed @ 12.5% as per Section 4(1)(e) of DVAT Act. Accordingly, present appeals are disallowed and dismissed.

20. Order pronounced in the open court

21. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 151 – (Delhi)

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "A"

Shri G. S. Pannu, Accountant Member and Shri Sanjay Garg, Judicial Member

I.T.A NO. 7512/Mum/2013
Assessment Year: 2010 – 11

Shri Hasmukh N. Gala ... Appellant
7B, Jai Mahavir Apartment, Dhake Colony, J. P. Road,
Andheri (W) Mumbai 400053

PAN: AABPG6064F

Versus

Income Tax Officer, 20 (1) (3) ... Respondent

Date of Hearing: 26.05.2015
Date of Pronouncement: 19.08.2015

CAPITAL GAIN: - SECTION 54 INCOME TAX ACT, 1962 – WHEN SUBSTANTIAL INVESTMENT WAS MADE IN THE NEW PROPERTY IN STIPULATED PERIOD, IT SHOULD BE DEEMED THAT SUFFICIENT STEPS HAD BEEN TAKEN AND IT WOULD SATISFY THE REQUIREMENTS OF SECTION 54 OF THE ACT – THE BASIC PURPOSE BEHIND SECTION 54 OF THE ACT IS TO ENSURE THAT THE ASSESSEE IS NOT TAXED ON THE CAPITAL GAIN, IF HE REPLACES HIS HOUSE AND SPEND MONEY EARNED ON THE CAPITAL GAIN WITHIN THE STIPULATED PERIOD – WE ARE INCLINED TO UPHOLD THE PLEA OF THE ASSESSEE FOR EXEMPTION UNDER SECTION 54 OF THE ACT QUA THE IMPUGNED INVESTMENT IN ACQUISITION OF THE NEW RESIDENTIAL HOUSE.

Brief facts of the case

Assessee sold house on 8.02.2009 for Rs. 1,02,55,000/- computed long term capital gain at Rs. 88,37,096/- claimed exemption under section 54 on the basis of receipt of advance payment of Rs. 1 crore dated 06.02.2010 made to builder and allotment letter dated 15.10.2010 issued by builder. The Assessing Officer noted that in the instant case, even after two years of the date of transfer of old house the construction of the new property was not completed and that assessee had not gained possession of the new premises also. Matter carried to ITAT, it was emphasized that complete amount of consideration was paid to the builder and there was no requirement to produce an agreement when the letter of allotment alongwith proof of payment clearly established that assessee had invested towards acquisition of a new residential house.

Held

The basic purpose behind section 54 of the Act is to ensure that the assessee is not taxed on the capital gain, if he replaces his house and

spend money earned on the capital gain within the stipulated period. The parity of reasoning explained by Hon'ble Delhi High Court in the case of Kuldeep Singh (supra) squarely covers the controversy in the present case in favour of the assertions made by the assessee. Therefore, we are inclined to uphold the plea of the assessee for exemption under section 54 of the act qua the impugned investment in acquisition of the new residential house.

Present for Appellant	:	Dr. K. Shivram & Shree Rahul R. Sarda
Present for Respondent	:	Shri Jeetendra Kumar

Cases referred:

1. *CIT vs. Mrs. Hilla J. B. Wadia, 216 ITR 376 (Bom.)*
2. *CIT vs. R. L. Sood, 245 ITR 727 (Del)*
3. *CIT vs. Kuldeep Singh, 270 CTR 561 (Del)*

Order

PER G.S. Pannu, A.M:

The present appeal is preferred by the assessee and is directed against the impugned appellate order dated 21/11/2013 passed by Ld. CIT(A)-31, Mumbai pertaining to the assessment year 2010-11, with reference to the assessment order dated 03/01/2013, passed in terms of section 143(3) of the Income Tax Act, 1961(the Act).

2. In this appeal although assessee has raised multiple grounds of appeal, but essentially the grievance of the assessee is against the stand of the income-tax authorities in denying the claim of exemption under section 54 of the Act.

3. The relevant facts are that the assessee is an individual who is engaged in the business of trading in glass.. In the return of income filed for the assessment year under consideration, assessee had declared sale of a residential property vide sale agreement dated 8/12/2009 for a total consideration of Rs.1,02,55,000/-. After considering the indexed cost of acquisition of Rs.14,17,904/-, the long term capital gain was computed at Rs.88,37,096/-. The relevant capital gain was claimed as exempt under section 54 of the Act on the strength of having acquired a new residential house being Flat Nos. 1 & 2 on 4th Floor in C-Wing, Ramniwas Building, Malad (E). The investment in acquisition of the new residential house was claimed by the assessee based on an advance of Rs.1.00 crore given to

the builder as booking advance through a cheque dated 6/2/2010. The assessee produced a copy of receipt of payment and allotment letter dated 15/10/2010 from the builder to justify acquisition of the new residential house.

4. The Assessing Officer examined assessee's claim under section 54 of the Act. According to the Assessing Officer, provisions of section 54 of the Act require the sassessee to purchase a new residential house either within a period of one years before the date on which the transfer of original asset took place or two years after date on which such transfer take place. The Assessing Officer noted that in the instant case, even after two years of the date of transfer of old house the construction of the new property was not completed and that assessee had not gained possession of the new premises also. He, therefore, held that assessee did not comply with the requirements of section 54 of the Act in as much as it could not be said that assessee had purchased a new residential house within the period prescribed therein. The Assessing Officer was of the view that giving of advance could not be treated as equivalent to 'purchase' for the purpose of section 54 of the Act, because no agreement was executed and that the advance money could be returned at any time. For the said reasons, the Assessing Officer disallowed the exemption claimed under section 54 of the Act. The assessee unsuccessfully carried the matter in appeal before CIT(A), who also sustained the conclusion drawn by the Assessing Officer. The CIT(A) concluded that for the purpose of section 54 of the Act the term 'purchase' cannot be equated to 'giving of advance'. Furthermore, CIT(A) observed that though assessee had parted with money, but he did not acquire possession or domain over the new residential house and, therefore, the denial of the claim of exemption under section 54 of the Act was affirmed.

5. In the above background, Ld. Representative for the assessee vehemently pointed out that the claim of the assessee has been unjustly denied by the lower authorities. It has been pointed out that assessee had duly invested the amount in acquisition of a new residential property and the delay in completion of construction by the builder was beyond the control of the assessee. It was pointed out that assessee had furnished the allotment letter in respect of the specific flat allotted by the builder and a copy of the same was also placed in the Paper Book at pages 7 to 10. It was emphasized that complete amount of consideration was paid to the builder and there was no requirement to produce an agreement when the letter of allotment alongwith proof of payment clearly established that assessee had invested towards acquisition of a new residential house. In the course of hearing, reliance has been placed on the following decisions:-

1. CIT vs. Mrs. Hilla J.B. Wadia , 216 ITR 376(Bom)

2. CIT vs. R.L.Sood, 245 ITR 727 (Del)

3. CIT vs. Kuldeep Singh, 270 CTR 561 (Del).

5.1 It was also contended that the Chandigarh Bench of the Tribunal in the case of Smt. Ranjeet Sandhu vs. DCIT, 49 SOT 7 (Chandigargh) held that completion of construction within the time limit prescribed in section 54 of the Act was not a condition for allowing of exemption and, therefore, on said parity of reasoning, assessee's claim for exemption under section 54 of the Act cannot be denied merely because the new residential house was not completed.

6. On the other hand, Ld. DR appearing for the Revenue has relied upon the conclusion drawn by the lower authorities by relying on the reasoning taken thereof. The reasons given by the Assessing Officer and CIT(A) to deny the claim have already been noted by us in the earlier para and the same are not being repeated for the sake of brevity.

7. We have carefully considered the rival submissions. The crux of the controversy before us relates to the understanding of the expression 'purchase' contained in section 54 of the Act. Notably, an assessee is entitled to the benefits of section 54 of the Act, if he has purchased the new property within a period of one year before the date of transfer of the old property or within two years from the date on which the transfer of old property took-place. The exemption under section 54 of the Act is also allowed in a situation where a new residential house is constructed within three years from the date of transfer of the old property. In the present case, the appellant has sold the old property on 8/12/2009 and according to the Assessing Officer, assessee was required to purchase the new property within a period of one year before 8/12/2009 or within two years from such date, which the assessee was found not to have complied with. The Assessing Officer also noted that assessee had not constructed a new residential house within a period of three years from 8/12/2009. On the other hand, the claim of the assessee is that it has fulfilled the requirements of section 54 of the Act because he has paid Rs.1.00 crore to the builder for acquisition of flat and the builder has issued an allotment letter in respect of the specific Flat being, Flat Nos. 1 & 2 on 4th Floor in C-Wing, Ramniwas Building, Malad (E).

7.1 The controversy is as to whether under these facts assessee can be said to have purchased the new property so as to entitle him for exemption

in relation to the amount spent towards the new property under section 54 of the Act. It is not disputed by the Revenue that the sum of Rs.1.00 crore has been invested by the assessee towards acquiring new property. Of course, the legal title in the said property has not passed or transferred to the assessee within the specified period and it is also quite apparent that the new property was still under construction. So however, the allotment letter by the builder mentions the flat number and gives specific details of the property.

7.2 In this context, the Hon'ble Delhi High Court in the case of Kuldeep Singh (supra) has explained the meaning of the expression ' purchased' in the context of section 54 of the Act in following words:-

> "8.The word 'purchase' can be given both restrictive and wider meaning. A restrictive meaning would mean transactions by which legal title is finally transferred, like execution of the sale deed or any other document of title. 'Purchase' can also refer to payment of consideration or part consideration alongwith transfer of possession under Section 53A of the Transfer of Property Act, 1882. Supreme Court way back in 1979 in CIT v. T.N Aravinda Reddy [1979] 120 ITR 46/2 Taxman 541, however, gave it a wider meaning and it was held that the payment made for execution of release deed by the brother thereby joint ownership became separate ownership for price paid would be covered by the word 'purchase'. It was observed that the word 'purchase' used in Section 54 of the Act should be interpreted pragmatically. In a practical manner and legalism shall not be allowed to play and create confusion or linguistic distortion. The argument that 'purchase' primarily meant acquisition for money paid and not adjustment, was rejected observing that it need not be restricted to conveyance of land for a price consisting wholly or partly of money's worth. The word 'purchase', it was observed was of a plural semantic shades and would include buying for a price or equivalent of price by payment of kind or adjustment of old debt or other monetary considerations. It was observed that if you sell a house and make profit, pay Caesar (State) but if you buy a house or build another and thereby satisfy the conditions of Section 54, you were exempt. The purpose was plain; the symmetry was simple; the language was plain.
>
> 9. Recently Supreme Court in Civil Appeal Nos. 5899-5900/2014 titled Sanjeev Lal v. CIT [2014] 46 taxmann.com 300 again examined Section 54 in a case where the assessee had entered into an agreement to sell a house to a third party on 27th December,

2002 and had received RS.15 lacs by way of earnest money and subsequently received the balance sale consideration of Rs.l.17 crores (total being Rs.1.32 crores) when the sale deed was executed on 24th September, 2004. In the meanwhile, the assessee had purchased another house on 30th April, 2003. Benefit under Section 54 was denied] by the High Court observing that the new house had been purchased prior to execution of the sale and not within one year prior to sale of original asset i.e. new house has been purchased on 30th April, 2003 whereas the earlier asset was sold only on 24th September, 2004. The Supreme Court allowing the appeal noticed that the agreement to sell was executed on 27th December, 2002 but the sale deed could not be executed because of inter-se litigation between the legal heirs, as one of them had challenged the will under which the assessee had inherited the property. The agreement to sell, it was held had given some rights to the vendor and reduced or extinguished rights of the assessee. This, it was observed was sufficient the purpose of Section 2(47), which defines the term transfer in relation to a capital asset. In the light of the factual matrix, it was observed that the intention behind Section 54 was to give relief to a person who had transferred his residential house and had purchased another residential house within two years of transfer or had purchased a residential house one year before transfer. It was only the excess amount not used for making purchase or construction of the property within the stipulated period, which was taxable as long term capital gain while on the amount spent, relief should be granted. Principle of purposive interpretation should be applied to subserve the object and more particularly when one was concerned with exemption from payment of tax. The assessee, therefore, succeeded. The observations made in the said decision are also relevant on the question whether the payments made by the assessee to the person with whom he had entered.into.an earlier agreement to sell should be allowed to be set off as expenses incurred in relation to the sale deed which was executed."

The Hon'ble Delhi High Court further referred to the decision of Hon'ble Madhya Pradesh High Court in the case of Smt. Shashi Varma vs. CIT, 224 ITR 106(M.P) and that of the Hon'ble Calcutta High Court in the case of CIT vs. Smt. Bharati C. Kothari (Cal) 244 ITR 352 and opined that when substantial investment was made in the new property, it should be deemed that sufficient steps had been taken and it would satisfy the requirements of section 54 of the Act. As per the Hon'ble High Court, the basic purpose behind section 54 of the Act is to ensure that the assessee is not taxed

on the capital gain, if he replaces his house and spend money earned on the capital gain within the stipulated period. The parity of reasoning explained by the Hon'ble Delhi High Court in the case of Kuldeep Singh (supra) squarely covers the controversy in the present case in favour of the assertions made by the assessee. Therefore, we are inclined to uphold the plea of the assessee for exemption under section 54 of the Act qua the impugned investment in acquisition of the new residential house.

7.3 The plea of the Revenue is that no purchase deed was executed by the builder and that there was only an allotment letter issued. As per the Revenue the advance could be returned at any time and, therefore, the assessee may lose the exemption under section 54 of the Act. In our considered opinion, the aforesaid does not militate against assessee's claim for exemption in the instant assessment year, as there is no evidence that the advance has been returned. In case, if it is found that the advance has been returned, it would certainly call for forfeiture of the assessee's claim under section 54 of the Act. In such a situation, the proviso below section 54(2) of the Act would apply whereby it is prescribed that such amount shall be charged under section 45 as income of the previous year, in which the period of three years from the date of the transfer of the original asset expires. The aforesaid provisions also does not justify the action of the Assessing Officer in denying the claim of exemption under section 54 in the instant assessment year.

7.4 In view of the aforesaid discussion and on the basis of material and evidence on record, we find that the assessee can be said to have complied with the requirement of section 54 of the Act; and, the exemption has been incorrectly denied by the lower authorities. As a matter of passing, we may also mention here the reliance placed by Ld. Representative of the assessee on the decision of our Coordinate Bench in the case of Shri Khemchand Fagwani vs. ITO, ITA No.7876/M/10 order dated 10/09/2014, wherein also claim of exemption under section 54 of the Act was allowed under similar circumstances. In the light of the precedent, we find no reason to deny the claim under section 54 of the Act. We direct accordingly.

8. At the time of hearing, Ld. Representative of the assessee has referred to an additional Ground of appeal relating to levy of interest under sections 234A, 234B & 234C of the Act. Since assessee has been allowed relief on account of exemption under section 54 of the Act, the levy of interest under sections 234A, 234B & 234C of the Act is consequential in nature and no specific determination is called for.

9. In the result, appeal of the assessee is allowed as above.

Order pronounced in the open court on 19th August, 2015.

[2017] 55 DSTC 159 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mrs. Justice Pratibha M. Singh]

ITA 115/2005

Commissioner of Income Tax ... Appellant

Versus

D. K. Garg ... Respondent

Date of Order: 4th August, 2017

CASH CREDIT – SECTION 68 OF INCOME TAX ACT, 1961 – WHERE ASSESSEE IS UNABLE TO EXPLAIN THE SOURCE OF CASH CREDIT IN HIS ACCOUNT – I.E. BY DEMONSTRATING THE IDENTITY OF THE PROVIDER OF THE CREDIT, THE CREDITWORTHINESS OF SUCH ENTITY AND GENUINESS OF THE TRANSACTION – THE ENTRY IS TREATED AS UNEXPLAINED AND THE AMOUNT OF CREDIT ENTRY IS TREATED UNDER SECTION 68 OF THE ACT AS INCOME OF THE ASSESSEE.

PEAK CREDITS – THE CONCEPT OF PEAK CREDIT IN THE SQUARING UP OF THE DEPOSITS IN ACCOUNT WITH THE CORRESPONDING PAYMENTS OUT OF THE AMOUNT TO THE SAME PERSON - THE PRINCIPLE OF PEAK CREDIT IS NOT APPLICABLE IN CASE WHERE THE DEPOSITS REMAINED UNEXPLAINED UNDER SECTION 68 OF THE ACT. IT CANNOT APPLY IN A CASE OF DIFFERENT DEPOSITORS WHERE THERE HAS BEEN NO TRANSACTION OF DEPOSITS AND REPAYMENT BETWEEN A PARTICULAR DEPOSITOR AND THE ASSESSEE - IF THE ASSESSEE AS A SELF-CONFESSED ACCOMMODATION ENTRY PROVIDER WANTED TO AVAIL THE BENEFIT OF THE 'PEAK CREDIT', HE HAD TO MAKE A CLEAN BREAST OF ALL THE FACTS WITHIN HIS KNOWLEDGE CONCERNING THE CREDIT ENTRIES IN THE ACCOUNTS. HE HAS TO EXPLAIN WITH SUFFICIENT DETAIL THE SOURCE OF ALL THE DEPOSITS IN HIS ACCOUNTS AS WELL AS THE CORRESPONDING DESTINATION OF ALL PAYMENTS FROM THE ACCOUNTS. THE ASSESSEE SHOULD BE ABLE TO SHOW THAT MONEY HAS BEEN TRANSFERRED THROUGH BANKING CHANNELS FROM THE BANK ACCOUNT OF CREDITORS TO THE BANK ACCOUNT OF THE ASSESSEE, THE IDENTITY OF THE CREDITORS AND THAT THE MONEY PAID FROM THE ACCOUNTS OF THE ASSESSEE HAS RETURNED TO THE BANK ACCOUNTS OF THE CREDITORS. THE ASSESSEE HAS TO DISCHARGE THE PRIMARY ONUS OF DISCLOSURE IN THIS REGARD

Facts

In the assessment order dated 28th March, 2002, the AO noted that the Assessee was not in a position to prove the source of deposits made in his bank accounts. Inquiries were made with the Union Bank of India, Karol Bagh, to obtain the details of cheques which were issued by Assessee.

These cheques were deposited in different bank accounts and these banks were further requested to provide the account opening forms of these concerned persons/beneficiaries to whom cheques were issued by the Assessee. After getting the addresses of these beneficiaries from their respective account opening forms, summons were issued to them. But almost all these beneficiaries were not found at the addresses given in their account opening forms. As regards the credit entries in the said accounts of the Assessee are concerned, wherever the Assessee was able to show that the corresponding issuance of cheque therefrom was to the same person, the benefit of the principle of 'peak credit' was given to him by the AO. Where, however, the source of the deposit and the issuance of the cheque was unexplained and could not be 'squared off', the AO treated the deposits as the Assessee's income and added it to the returned income. From the Assessee's books it was found that cheques worth Rs. 90 lakhs were received by the Assessee from three companies viz., M/s Anuradha Pharmaceuticals, M/s Sai Fisheries and M/s Premchand Plantations. The unexplained peak credit of the cheques deposited in the Assessee's bank accounts were considered and a sum of Rs.20,91,882 was added to the total income of the Assessee under Section 68 of the Act. Likewise, the unexplained cash deposits in his bank accounts amounting to Rs.51, 17,114 were also added to his total income. The total income was, therefore, revised to Rs.72, 58,880 under Section 143(3) read with Section 147 of the Act. The ITAT restricted the addition to peak credit as worked out by the Assessee as Rs. 587374/- as against Rs. 7208996/-. Revenue carried the matter to the High Court. Following question was framed by the Court.

> *"Whether the Income Tax Appellate Tribunal was correct in law in restricting the addition made on account of unexplained deposits in the bank accounts of the assessee to Rs 5, 87,374/- as against Rs72, 08,996/- on the basis of peak credit theory ?"*

Held

The peak credit worked out by the Assessee was on the basis that the principle of peak credit would apply, notwithstanding the failure of the Assessee to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off. That is not permissible in law as explained by the Allahabad High Court in the aforementioned decisions which, this Court concurs with. As already noted, the ITAT went merely on the basis of accountancy, overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under Section 68 of the Act. The question of law framed by this Court, is accordingly, answered in the negative i.e. in favour of

the Revenue and against the Assessee. The impugned order of ITAT is, accordingly, set aside and the order of the AO is restored to file.

Present for the Appellant	:	Mr. Ruchir Bhatia, Senior Standing Counsel
Present for the Respondent	:	Mr. Rakesh Gupta, Advocate with Mr. Ashwini Taneja, Mr. Rohit Kumar Gupta, Mr. Lakshya Goyal, Advocate

Cases referred:

1. *CIT V. Vijay Agricultural Industries (2007) 294 ITR*
2. *Bhaiyalal Shyam Bihari V. CIT (2005) 276 ITR 38 (All.)*

ORDER

Dr. S. Muralidhar, J.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is against an order dated 12th February, 2004 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4514/Del/2003 for the Assessment Year ('AY') 1995-96.

Question of law

2. While admitting this appeal on 28th November, 2008, the following question of law was framed:

> "Whether the Income Tax Appellate Tribunal was correct in law in restricting the addition made on account of unexplained deposits in the bank accounts of the assessee to Rs 5,87,374/- as against Rs 72,08,996/- on the basis of peak credit theory?"

Background facts

3. The Respondent/Assessee is a Chartered Accountant. For the AY in question, he filed his return of income on 10th October, 1996 declaring his taxable income at Rs. 49,880 which comprised his gross professional receipts of Rs. 1,91,050. The Assessing Officer ('AO') noted that the Assessee was holding two current accounts in the Union Bank of India, Karol Bagh, wherein sufficient cash and cheque deposits were made during the relevant period. It was also noted that the Assessee had floated one company viz., M/s Prem Chand Plantation Private Limited and purchased two other companies viz., M/s Anuradha Pharmaceuticals Pvt. Ltd. and M/s

Sai Fisheries Pvt. Ltd. The AO further noted that the said three companies and other two companies viz., Zamindar Plantation Pvt. Ltd. and Kisan Plantation Pvt. Ltd. were all sold to M/s James Group.

4. Notice was issued to the Assessee on 29th April, 1999 under Section 148 of the Income Tax Act ('the Act') regarding his income that escaped assessment. The Assessee did not participate in the re-assessment proceedings for a long time. Thereafter, on 5th February, 2002, the Assessee informed the AO that the return already filed by him on 10th October, 1996 should be treated as his return in response to the notice under Section 148 of the Act. Before the AO the Assessee gave a statement in writing in which he, inter alia, stated thus:

> "I have already stated to your honour on the statement recorded and the subsequent note on the activities carried by me that I was indulged in the business of providing entries to the parties who are in need for the same. The entries were routed thru agriculture companies. I have earned an income of Rs. 1,91,168/- from the said business during the year 1994-95 and in the subsequent year I could not earn the income because the demand for fresh entries were negligible. The calculation and the detail how I have earned income are enclosed herewith for both the years. The entries consists of loan entries and loan entries for applying shares in public issues. I was getting merely 1 % commission / services charges and 0.25% on amount utilized in public issues. The name of the companies are also enclosed herewith giving the quantum of entries provided as loan and for subscription in public issues."

Assessment order

5. In the assessment order dated 28th March, 2002, the AO noted that the Assessee was not in a position to prove the source of deposits made in his bank accounts. Inquiries were made with the Union Bank of India, Karol Bagh, to obtain the details of cheques which were issued by Assessee. These cheques were deposited in different bank accounts and these banks were further requested to provide the account opening forms of these concerned persons/beneficiaries to whom cheques were issued by the Assessee. After getting the addresses of these beneficiaries from their respective account opening forms, summons were issued to them. But almost all these beneficiaries were not found at the addresses given in their account opening forms. As regards the credit entries in the said accounts of the Assessee are concerned, wherever the Assessee was able to show that the corresponding issuance of cheque therefrom was to the same person, the benefit of the principle of 'peak credit' was given to him

by the AO. Where, however, the source of the deposit and the issuance of the cheque was unexplained and could not be 'squared off', the AO treated the deposits as the Assessee's income and added it to the returned income. From the Assessee's books it was found that cheques worth Rs. 90 lakhs were received by the Assessee from three companies viz., M/s Anuradha Pharmaceuticals, M/s Sai Fisheries and M/s Premchand Plantations. The unexplained peak credit of the cheques deposited in the Assessee's bank accounts were considered and a sum of Rs.20,91,882 was added to the total income of the Assessee under Section 68 of the Act. Likewise, the unexplained cash deposits in his bank accounts amounting to Rs.51,17,114 were also added to his total income. The total income was, therefore, revised to Rs.72,58,880 under Section 143(3) read with Section 147 of the Act.

Before the CIT (A)

6. The Assessee then went in appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)'] against the aforementioned order of assessment. Before the CIT (A), it was pointed out by the Assessee that he was merely lending his name and providing accommodation entries. Accordingly, it was pleaded before the AO on behalf of the Assessee that only the peak credit in the two bank accounts should be worked out taking into account both the cash and cheque transactions. It was argued on behalf of the Assessee that the additions made by the AO should be restricted to the extent of peak credit only. The Assessee worked out the peak credit as Rs.5,87,374.

7. On this, the CIT (A), asked for a Remand Report from the AO. On 8th July 2003, the AO submitted a remand report wherein the peak balance in the two bank accounts, as worked out by the Assessee at Rs.5,87,374, as on 6th December, 1995, was accepted. However, the AO reiterated his stand that the additions made separately, for the cash deposits as well as for the peak credit on account of cheque transactions with the three companies viz., M/s Anuradha Pharmaceuticals, M/s Sai Fisheries and M/s Premchand Plantations, were justified.

8. By the order dated 21st August 2003, the CIT (A) dismissed the Assessee's appeal and upheld the assessment order. It was categorically noted by the CIT (A) that the Assessee could not substantiate his stand through documentary evidence. The AO tried to locate the concerned persons/beneficiaries through the addresses given in their account opening forms, however, to no avail as, most of these addresses were found to be incorrect. It was noted that the Assessee was involved in the activity of providing cheques by accepting deposits in cash. In the circumstances,

noting that the AO had duly accounted for squared off transactions and made additions only to the extent to which there was no convincing explanation given by the Assessee, for cash or cheque transactions, the CIT (A) dismissed the Assessee's appeal.

Impugned order of the ITAT

9. The Assessee went in further appeal before the ITAT. The Assessee challenged the two additions made by the AO i.e. of Rs.51,17,114 on account of unexplained cash deposits and of Rs. 20,91,882 representing the peak amounts in respect of the cheques in the three accounts i.e. M/s Anuradha Pharmaceuticals, M/s Sai Fisheries and M/s Premchand Plantations. According to the ITAT, "the method of working out the addition adopted by the AO and sustained by the CIT (A) wherein the cash entries and cheque entries have been treated differently is absolutely illogical and irrational and cannot be upheld". It was noted that while dealing with the cash deposits, the AO had worked out the difference between the total deposits and the total withdrawals in regard to the two accounts whereas with regard to the cheque transactions, the AO had worked out the peak separately relating only to the three companies i.e. M/s Anuradha Pharmaceuticals, M/s Sai Fisheries and M/s Premchand Plantations.

10. The ITAT disapproved of the AO having worked out the peak credit separately for the cheques issued by the three companies and, according to ITAT, "the entire approach adopted by the revenue authorities betrays lack of understanding of basic accounting principles." The ITAT also found that there was a contradiction in the findings of the AO and CIT (A) inasmuch as, even after finding that the three companies were non-existent, the peak credits have been worked out separately for cash deposits and cheques issued by the companies. The ITAT then observed that if the companies were non-existent, there was no justification for the AO to treat the payments vis-a-vis the three companies as the income of the Assessee. It was further observed by the ITAT that the Assessee had himself deposited the unaccounted money in these accounts and issued cheques. It was also observed by the ITAT that the additions could not be made twice, once on the basis of cash deposits and again on the basis of cheque transactions. This would amount to double addition which could not be upheld. The ITAT, thereafter, restricted the addition to peak credit as worked out by the Assessee as Rs. 5,87,374 as against Rs. 72,08,996.

Submissions of learned counsel for the Revenue

11. Mr. Ruchir Bhatia, learned Senior Standing counsel for the Revenue, submitted that the approach of the ITAT was erroneous inasmuch as

the ITAT has failed to appreciate that the Assessee had not provided an explanation for all the cheque deposits or even the cash deposits and the corresponding cheques issued from his account. According to him, the concept of working out the peak credit would arise only if it was possible to square off the deposits made in an account against the cheques issued therefrom. If 'A' made a deposit in the account and the ultimate payment was made to 'A' either in A's account by cash or cheque then to that extent, the peak credit can be worked out. However, where a source of deposit is not explained and the corresponding outgo is also unexplained, the question of giving the Assessee the benefit of peak credit would not arise. He placed reliance on the decision of the Allahabad High Court in CIT v. Vijay Agricultural Industries (2007) 294 ITR 610 which in turn followed its earlier decision in Bhaiyalal Shyam Bihari v. CIT (2005) 276 ITR 38 (All).

Submissions of learned counsel for the Assessee

12. Dr. Rakesh Gupta, learned counsel for the Assessee, on the other hand submitted that the issue in the present appeal under Section 260 A of the Act is confined only to working out of the peak credit. He pointed out that the AO had himself accepted the peak credit as worked out by the Assessee. There was no justification for the CIT (A) in sustaining the order of the AO and not restricting the addition to the peak credit as worked out by the Assessee. After the CIT (A) and the AO had both accepted that the Assessee was an accommodation entry provider, there was no justification in working out the peak credit separately for the cash and the cheque transactions. His argument was that all the cheque and cash credits in his own accounts should be consolidated and adjusted against all the entries reflecting the outgo, either by cash or cheque. The peak credit, thus, worked out should alone be taxed as that alone was the Assessee's income. According to him, the issue should not be seen from the point of view of 'ethics' but only from the point of view of 'accountancy'.

Analysis and reasons

13. There have been numerous cases before the AO, CIT (A), the ITAT and for that matter even before this Court, where the question involved concerns the treatment of 'accommodation entries'. Basically, what an accommodation entry provider does is to accept cash from an Assessee and arranges to have a cheque issued from his own account or some other account, usually of 'paper' or fake entities, to make it appear to be a loan or an investment in share capital. The accommodation entry provider usually charges a commission which is deducted upfront. Where the Assessee is unable to explain the source of such credit in his account - i.e. by

demonstrating the identity of the provider of the credit, the creditworthiness of such entity, and the genuineness of the transaction - the credit entry is treated as unexplained and the income is treated under Section 68 of the Act as the income of the Assessee.

14. In cases where the Assessee discharges the initial onus of establishing the identity and creditworthiness of the credit provider and the genuineness of the transaction, be it one of loan or subscribing to share capital, the onus shifts to the revenue to show the contrary. Where, for instance, an Assessee furnishes the complete details of the entity like its certificate of incorporation, PAN number, income tax returns, bank accounts, names and addresses of the directors and so on, the Courts have insisted on the AO to make a proper enquiry to examine the identity and creditworthiness of such companies and the genuineness of the transactions in question. Where the AO fails to make such an enquiry, a Court might delete the additions made by the AO.

15. The present case, however, is of a different nature. Here, we are dealing with an Assessee who does not deny that he is an accommodation entry provider. He, in fact, makes no bones of the fact that he either owned or floated 'paper companies' only for that purpose. He also does not dispute the fact that he has not been able to explain the source of all the deposits in his accounts or the ultimate destination of all the outgo from his accounts.

16. The Assessee's plea that he should be taxed only on a composite 'peak credit' is based entirely on principles of accountancy. He questions the logic behind allowing peak credits for some of the credit entries by way of cheques and denying it for the other entries in cash. He also questions the practice of working out separate peak credits for cheque and cash transactions.

17. The premise underlying the concept of peak credit is the squaring up of the deposits in the account with the corresponding payments out of the account to the same person. In Bhaiyalal Shyam Bihari v. CIT (supra), the Allahabad High Court explained that benefit of peak can be given only when the assessee owns up all the cash credits in the books of accounts. It was further held:

> "For adjudicating upon the plea of peak credit the factual foundation has to be laid by the assessee. He has to own all cash credit entries in the books of account and only thereafter can the question of peak credit be raised."

18. In that case, it was held that as the amount of cash credits stood in the names of different persons which the Assessee had all along been

claiming to be genuine deposits, withdrawals/payments to different persons during the previous years, the Assessee was, therefore, not entitled to claim the benefit of peak credit. Later in CIT v. Vijay Agricultural Industries (supra), it was reiterated that: "The principle of peak credit is not applicable in case where the deposits remained unexplained under Section 68 of the Act. It cannot apply in a case of different depositors where there has been no transaction of deposits and repayment between a particular depositor and the assessee." On the facts of that case it was held that peak credit could be applied only in the case of squared up accounts. In other words, where an Assessee was unable to explain the sources of deposits and the corresponding payments then he would not get the benefit of 'peak credit'.

19. The legal position in respect of an accommodation entry provider seeking the benefit of 'peak credit' appears to have been totally overlooked by the ITAT in the present case. Indeed, if the Assessee as a self-confessed accommodation entry provider wanted to avail the benefit of the 'peak credit', he had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The Assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the Assessee, the identity of the creditors and that the money paid from the accounts of the Assessee has returned to the bank accounts of the creditors. The Assessee has to discharge the primary onus of disclosure in this regard.

20. While the AO in the present case did not question the working out of the peak credit by the Assessee, he, at the same time, insisted that the additions made by him to the returned income of the Assessee should be sustained. The peak credit worked out by the Assessee was on the basis that the principle of peak credit would apply, notwithstanding the failure of the Assessee to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off. That is not permissible in law as explained by the Allahabad High Court in the aforementioned decisions which, this Court concurs with.

Conclusion

21. As already noted, the ITAT went merely on the basis of accountancy, overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under Section 68 of the Act. The question of

law framed by this Court, is accordingly, answered in the negative i.e. in favour of the Revenue and against the Assessee. The impugned order of ITAT is, accordingly, set aside and the order of the AO is restored to file.

22. The appeal is allowed in the above terms with no order as to costs.

[2017] 55 DSTC 168 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Muralidhar & Hon'ble Mrs. Justice Pratibha M. Singh]

ST APPL. No. 63/2014

H. G. International ... Petitioner

Versus

The Commissioner of Trade& Taxes, Delhi ... Respondent

Date of Order: 16th August, 2017

ASSESSMENT BY AN OFFICER WHO CONDUCTS AUDIT – SECTION 58, 66 OF DVAT ACT, 2004 – WHETHER THE PERSON WHO CONDUCTS AUDIT CAN HIMSELF MAKE THE ASSESSMENT – HELD – YES

Facts

The Appellant is engaged in the business of trading in auto parts, tyres and the lubricant oil. The Appellant's claim of input tax credit was rejected for the aforementioned 2nd, 3rd and 4th quarters for 2008-09 resulting in creation of demand and imposition of penalty. After the OHA upheld the orders of default assessment and interest and penalty issued by the Value Added Tax Officer ('VATO'), who also happened to be the VATO (Audit), the Appellant approached the AT which, by the impugned order, has dismissed the appeal of the Appellant. Appellant carried the matter to High Court. It is significant that, at no stage of proceedings before the VATO, the OHA, or the AT, did the Appellant raise the issue regarding the jurisdiction of the VATO (Audit) to pass the default assessment order. Court has permitted the Appellant to raise this question since it does go to the root of the matter. On the basis of certain decisions of Supreme Court and High Courts appellant pleaded that the person who conducts the audit cannot himself make assessment. The Court disagreed with the appellant contention.

Held

The powers under Section 58 can be delegated by the Commissioner to named officers in terms of Section 66 (1) read with Section 68 of the DVAT Act. At that relevant time when the audit of the Appellant took place, there was an order dated 31st October 2005 issued by the Commissioner, VAT under Section 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules') delegating his powers under various provisions of the DVAT Act to an officer of a particular designation. Relevant to the present case is the entry at Sl. No. 15 of the said order, which reads as under:

SL. No	Section	Power delegated	Officer to whom delegated
15	58	All powers to audit the business affairs of the dealer / any person for (a) confirming the assessment under the review or (b) serve a notice of the assessment or re-assessment of the amount of tax interest and penalty.	All Officers appointed under sub section (2) of section 66 of the Delhi Value Added Tax Act, 2004 not below the rank of Value Added Tax Officer.

At the time when the impugned orders of default assessment of tax, interest, and penalty were passed by the VATO (Audit) in the present case, the above order was in force. It is a validly issued order and is not a subject matter of challenge in the present proceedings. The above order delegates to the VATO all the powers of an auditor under Section 58 of the DVAT Act for (a) confirming the assessment under review or (b) serving a notice of assessment or re-assessment. Consequently, in the present case, the impugned orders of default assessment of tax, interest and penalty issued by the VATO (Audit) were validly issued and were within his powers and jurisdiction in terms of Section 58 (1) read with Section 58 (4), and Section 66 read with Section 68 of the DVAT Act.

Present for the Petitioner : Mr. H. L. Taneja with Mr. Sumit Kumar Batra, Advocate

Present for the Respondent : Mr. Gautam Narayan, ASC with Mr. R. A. Iyer, Advocate with Ms. Trisha Singh, LA

Cases referred:

1. *Indian and Eastern Newspaper Society v Commissioner of Income-Tax [1979] 119 ITR 996(SC);*

2. *Carlton Overseas Pvt. Ltd. v. Income Tax Officer [2009] 318 ITR 295 (Del);*
3. *ATS Infrastructure Ltd. v. CIT [2009] 318 ITR 299 (Del)*
4. *Duncan Services Ltd. v. Income Tax Officer [1992] 198 ITR 264 (Del)*
5. *Commissioner of Wealth-Tax v. AbdulsaeedAbdulhamid Patel [2006] 281 ITR 132 (Guj)*

Order

Dr. S. Muralidhar, J.:

1. The matter is taken up for hearing today as 14th August 2017 was declared a holiday on account of Janmashtami.

2. The only question of law framed by the order dated 4th August 2016 is "whether the VATO (Audit) can pass an assessment order in terms of the Delhi Value Added Tax Act, 2004?"

3. The present appeal by the Assessee under Section 81 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') is directed against an order dated 1st August 2014 passed by the Appellate Tribunal, Value Added Tax ('AT') dismissing the Appellant's appeal against two separate orders, dated 9th September 2011 and 29th March 2013, passed by the Special Commissioner-I/Objection Hearing Authority ('OHA') which upheld the default assessment of tax and interest under Section 32 of the DVAT Act for the 2nd, 3rd and 4th quarters of 2008-09 and penalty under Section 33 read with Section 86(13) of the DVAT Act for 2008-09.

4. The Appellant is engaged in the business of trading in auto parts, tyres and the lubricant oil. The Appellant's claim of input tax credit was rejected for the aforementioned 2nd, 3rd and 4th quarters for 2008-09 resulting in creation of demand and imposition of penalty. After the OHA upheld the orders of default assessment and interest and penalty issued by the Value Added Tax Officer ('VATO'), who also happened to be the VATO (Audit), the Appellant approached the AT which, by the impugned order, has dismissed the appeal of the Appellant.

5. It is significant that, at no stage of proceedings before the VATO, the OHA, or the AT, did the Appellant raise the issue regarding the jurisdiction of the VATO (Audit) to pass the default assessment order.

6. However, this Court has permitted the Appellant to raise this question since it does go to the root of the matter. The thrust of the arguments of the

Appellant as articulated by its counsel Mr H.L. Taneja, is that the person who conducts the audit cannot himself make the assessment. In support of this contention reliance is first place on the decisions in Indian and Eastern Newspaper Society v Commissioner of Income-Tax [1979] 119 ITR 996 (SC); Carlton Overseas Pvt. Ltd. v. Income Tax Officer [2009] 318 ITR 295 (Del); ATS Infrastructure Ltd. v. CIT [2009] 318 ITR 299 (Del) and Duncan Services Ltd. v. Income Tax Officer [1992] 198 ITR 264 (Del).

7. It was pointed out to Mr. Taneja that all the above decisions were under the Income Tax Act, 1961 and not in the context of the DVAT Act. Mr. Taneja, however, insisted that the said provisions are comparable. According to him what has been explained in the context of the powers of an officer entrusted with the powers of audit under the Income Tax Act would ipso facto also apply to the provisions in the DVAT Act that deal with audit.

8. The Court is unable to agree with the above submission. As far as DVAT Act is concerned, there are specific provisions that deal with audit. Section 58 of the DVAT Act reads as under:

"58. Audit

(1) The Commissioner may serve on any person in the prescribed manner a notice informing him that an audit of his business affairs shall be performed and where applicable, that an assessment already concluded under this Act may be reopened.

Explanation.- A notice may be served notwithstanding the fact that the person may already have been assessed under sections 31, 32 or 33 of this Act.

(2) A notice served under sub-section (1) of this section may require the person on whom it is served, to appear on a date and place specified therein, which may be at his business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.

(3) The person on whom a notice is served under sub-section (1) shall provide all co-operation and reasonable assistance

to the Commissioner as may be required to conduct the proceedings under this section at his business premises.

(4) The Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either –

(a) confirm the assessment under review; or

(b) serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to sections 32 and 33 of this Act.

(5) Any assessment pursuant to an audit of the person's business affairs shall be without prejudice to prosecution for any offence under this Act."

9. The above provision has also to be understood in the context of Section 66 (1) and Section 68 of the DVAT Act, which read as under:

"66 (1) For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax."

68. Delegation of Commissioner's powers

(1) Subject to such restrictions and conditions as may be prescribed, the Commissioner may delegate any of his powers under this Act to any Value Added Tax authorities.

(2) Where the Commissioner delegates his powers under Chapter X, the delegate shall carry and produce on demand evidence in the prescribed form of the delegation of these powers when exercising the powers.

(3) Where the Commissioner has delegated a power to a Value Added Tax Authority, the Commissioner may supervise, review and rectify any decision made or action taken by that Authority. Explanation.- The exercise of this power of supervision, review or rectification will not lead to the issue of an assessment or re-assessment after the expiry of the time referred to in section 34 of this Act.

10. It is seen that Chapter X of the DVAT Act deals with the audit, investigation and enforcement. Under Section 58 (1) of the DVAT Act, the Commissioner may serve on any person a notice informing that an audit shall be performed and an assessment already abated with the reopening. In terms of Section 58 (3), the person on whom the notice is served is expected to provide all cooperation and reasonable assistance as may be required to conduct the audit proceedings. Section 58 (4) states that the Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of audit, if any, or any information otherwise available to him, either confirm the assessment under review or serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty pursuant to Sections 32 and 33 of the DVAT Act. Therefore, Section 58 (4) itself contemplates the auditor carrying out an assessment or re-assessment as the case may be, in terms of Sections 32 and 33 of the DVAT Act.

11. The powers under Section 58 can be delegated by the Commissioner to named officers in terms of Section 66 (1) read with Section 68 of the DVAT Act. At that relevant time when the audit of the Appellant took place, there was an order dated 31st October 2005 issued by the Commissioner, VAT under Section 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules') delegating his powers under various provisions of the DVAT Act to an officer of a particular designation. Relevant to the present case is the entry at Sl. No. 15 of the said order, which reads as under:

SL. No	Section	Power delegated	Officer to whom delegated
15	58	All powers to audit the business affairs of the dealer / any person for (a) confirming the assessment under the review or (b) serve a notice of the assessment or re-assessment of the amount of tax interest and penalty.	All Officers appointed under sub section (2) of section 66 of the Delhi Value Added Tax Act, 2004 not below the rank of Value Added Tax Officer.

12. At the time when the impugned orders of default assessment of tax, interest, and penalty were passed by the VATO (Audit) in the present case, the above order was in force. It is a validly issued order and is not a subject matter of challenge in the present proceedings. The above order delegates to the VATO all the powers of an auditor under Section 58 of the DVAT Act for (a) confirming the assessment under review or (b) serving a notice of assessment or re-assessment.

13. Consequently, in the present case, the impugned orders of default assessment of tax, interest and penalty issued by the VATO (Audit) were validly issued and were within his powers and jurisdiction in terms of Section 58 (1) read with Section 58 (4), and Section 66 read with Section 68 of the DVAT Act.

14. Mr. Taneja referred to the decision in Commissioner of Wealth-Tax v. Abdulsaeed Abdulhamid Patel [2006] 281 ITR 132 (Guj) where it was held that where there was no specific provision in a tax statute, a similar provision in another tax statute can be invoked. The said decision was in the context of the Wealth Tax Act, 1957 and is of no assistance to the Appellant since in the DVAT Act, as already noticed hereinbefore, there are specific provisions concerning audit and delegation of powers by the Commissioner, VAT to the VATO for conducting the audit and making assessment thereunder.

15. Mr. Taneja then referred to the decisions in Tata Sponge Iron Ltd. v Commissioner of Sales Tax, Orissa [2012] 49 VST 33 (Ori) and ABB India Limited v. State of Odisha [2015] 77 VST 124 (Ori) wherein it was held that the officer who prepares the audit report cannot himself pass an assessment order based on such audit report. The said decisions are distinguishable in their application to the present case since the corresponding provision under the Orissa Value Added Tax, 2004 ('OVAT Act') is Section 41 (4) which does not envisage the same officer who conducts the audit also making the consequent assessment. The said provision reads as under:

> "41 (4) After completion of tax audit of any dealer under sub-section (3), the officer authorised to conduct such audit shall, within seven days from the date of completion of the audit, submit the audit report, to be called "Audit Visit Report", to the assessing authority in the prescribed form along with the statements recorded and documents obtained evidencing suppression of purchases or sales, or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes."

16. Thus, under the OVAT Act the officer undertaking the audit has to forward the report to the assessing officer who then, in terms of Section 42 of the OVAT Act, makes an 'audit assessment'. The position under Section 58 of the DVAT Act is very different.

17. Likewise the decisions in Sha. M. Hastimal and Co. v. Deputy Commissioner of Commercial Taxes (1989) 72 STC 308 which was under

the Karnataka Sales Tax Act, 1957, Eureka Forbes Ltd. v. State of Bihar [2000] 119 STC 460 (Pat) which was under the Bihar Finance Act, 1981, Ansal Papers v. State of U.P. [2009] 20 VST 727 (All) which was under the U.P. Trade and Tax Act, 1948 are distinguishable as they were in the context of the specific provisions of those enactments which bear no comparison to Section 58 of the DVAT Act.

18. For the aforementioned reasons, the question framed by this Court by order dated 4th August, 2016 is answered in the affirmative, i.e. in favour of the Department and against the Assessee. The order dated 1st August 2014 of the AT is affirmed. The appeal is dismissed, but in the circumstances, with no orders as to costs.

[2017] 55 DSTC 175 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr. Justice S. Ravindra Bhat & Hon'ble Mr. Justice Najmi Waziri]

VAT Appeal 1/2017, C. M. Appl. 671 – 673/2017

Commissioner of Value Added Tax & Anr ... Petitioner

Versus

M/s. J. C. Decaux Advertising India Pvt. Ltd ... Respondent

Date of order: 09.01.2017

INPUT TAX CREDIT– RETAIL INVOICE – SECTION 9 (8) AND 50 (2) OF DVAT ACT, 2004 – ITC CLAIMED AGAINST THE RETAIL INVOICE DENIED BY THE VATO – OHA CONFIRMED THE ORDER – TRIBUNAL SET ASIDE THE FINDINGS OF LOWER AUTHORITIES ON AN INTERPRETATION OF SECTION 50, WHICH ACCORDING TO TRIBUNAL WAS ENACTED ONLY FOR THE ADMINISTRATIVE CONVENIENCE OF THE REVENUE - MATTER CARRIED TO THE HIGH COURT – REVENUE SUBMITTED THAT A CONJOINT READING OF SECTIONS 9(8) AND 50 CLARIFY FIRSTLY THAT A CLEAR DISTINCTION EXISTS BETWEEN "TAX INVOICE" ON THE ONE HAND AND "RETAIL INVOICE" ON THE OTHER, AND THAT IF ONLY THE RELEVANT DETAILS ARE FOUND IN THE CONCERNED DOCUMENTS AND THE DEALER SATISFIES THE VATO IN THAT REGARD CAN CREDIT BE CLAIMED.

Held

Having regard to the nature of the document, we are of the opinion that the strict interpretation of Section 50(2) in the facts of this case was unwarranted. One has to keep in mind that Section 9(2) is

the only provision which spells negative conditions or disqualifications for a dealer as it were in claiming credit. To read the provisions of the enactment as strictly as the VATO did in the present case where all the substantial and essential details existed in the document and choosing not to overlook the description (in other words, preferring form over substance) justify the ultimate conclusion of the VAT Tribunal. At the same time, this Court is also of the opinion that the observations of the Tribunal with regard to Section 50 cannot be countenanced as it were. The rationale for the legislature to have made a distinction between retail invoices and tax invoice – imposing additional conditions in the case of the latter cannot be lost sight of. It is significant that a retail invoice has per se not been defined and is conditional upon the prescription by the rule or other notifications under Section 50(5). Subject to the above clarification with respect to the Tribunal's observations of Section 50, no substantial question of law arises. The appeal is accordingly dismissed

Present for the Appellant : Mr. Satyakam, ASC with Sh. Biju Raj, VATO, Ward – 92

Present for the Respondent : None

Order

1. The Revenue in this appeal under Section 81 of the DVAT Act, 2004 urges that the VAT Tribunal's interpretation with respect to Sections 50(2) and 9(8) is erroneous.

2. The facts of the case are that the respondent/assessee, in its return, for certain quarters in 2008-09 had claimed tax credit in respect of transactions with M/s. Jumbo Digital Prints from whom it had sourced printed banners. Concededly, the assessee/purchasing dealer had paid the VAT amounts involved. When it sought to claim credit, the VATO, in default assessment orders, denied the credit on the ground that the transactions were reflected in retail invoices and not tax invoices and, therefore, did not qualify for credit. This opinion was formed by the Objection Hearing Authority (OHA). The VAT Tribunal, however, set aside these findings on an interpretation of Section 50, which according to it was enacted only for the administrative convenience of the Revenue. It is argued by Sh. Satyakam, learned counsel that a conjoint reading of Sections 9(8) and 50 clarify firstly that a clear distinction exists between "Tax Invoice" on the one hand and "Retail Invoice" on the other, and that if only the relevant details are found in the concerned documents and the dealer satisfies the VATO in that regard can credit be claimed.

3. This Court has considered the submissions of the Revenue as well as the reasoning of the VAT Tribunal. The Tax Invoice is defined by Section 2(zh) which refers to Section 50. Section 9 in its relevant part which deals with tax credits reads as follows:

"9 Tax credit

Rules: 6, 7	Form : Nil	Para (Vol.1): 10.3, 11.4

[(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period 2 [where the purchase arises] in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making –

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act.

Explanation.- Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.]

(2) No tax credit shall be allowed –

(a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;

(b) for the purchase of non-creditable goods;

(c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;

Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;

(d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act; 3[(e) for goods purchased from a casual trader;]

(f) to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.]

(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.

(3) The amount of the tax credit to which a dealer is entitled in respect of the purchase of goods shall be the amount of input tax arising in the tax period reduced in the manner described in sub-sections 4 [(4), (6) and (10)] of this section.[1]

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(8) The tax credit may be claimed by a dealer only if he holds a tax invoice at the time the prescribed return for the tax period is furnished."

4. The relevant part of Section 50 reads as follows:

"50 Tax invoices

Rule: 44	Form : 36	Para (Vol.1): 13.1.3, 24.1, 24.2

(1) A registered dealer making a sale liable to tax under this Act shall, at the request of the purchaser, provide the purchaser at the time of sale with a tax invoice containing the particulars specified in sub-section (2) of this section and retain a copy thereof:

PROVIDED that a tax invoice shall not be issued by a dealer who –

(a) is specified in the Fifth Schedule;

(b) elects to pay tax under section 16 of this Act; or

(c) is making the sale in the course of interstate trade or commerce or export:

PROVIDED FURTHER that not more than one tax invoice shall be issued for each sale:

PROVIDED FURTHER that if an invoice has been issued under the provisions of the Central Excise Act, 1944 (1 of 1944), it shall

be deemed to be a tax invoice if it contains the particulars specified in sub-section (2) of this section.

Explanation.- For removal of doubts, a registered dealer shall be authorized to issue tax invoices only after a certificate of registration is issued by the Commissioner.

(2) The tax invoice issued under sub-section (1) of this section shall contain the following particulars on the original as well as copies thereof:–

(a) the words 'tax invoice' in a prominent place;

(b) the name, address and registration number of the selling registered dealer;

(c) the name and address of the purchaser and his registration number, where the purchaser is a registered dealer;

(d) an individual pre-printed serialised number and the date on which the tax invoice is issued;

[PROVIDED that a dealer may maintain separate numerical series, with distinct codes either, as a prefix or suffix, for each place of business in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;

[PROVIDED FURTHER that such numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;]

(e) description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon indicated separately;

(f) the signature of the selling dealer or his servant, manager or agent, duly authorized by him; and

(g) the name and address of the printer and first and last serial number of tax invoices printed and supplied by him to the dealer.

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(4) Except when a tax invoice is issued under sub-section

(1) of this section, if a dealer sells any goods exceeding such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a retail invoice containing the particulars specified in sub-section (5) of this section and retain a copy thereof.

(5) The retail invoice issued under sub-section (4) of this section shall contain the following particulars on the original as well as copies thereof: –

(a) the words 'retail invoice' or 'cash memorandum' or 'bill' in a prominent place;

(b) the name, address and registration number of the selling dealer, if registered;

(c) in case the sale is in the course of inter-state trade or commerce, the name, registration number and address of the purchasing dealer and type of statutory form, if any, against which the sale has been made;

(d) an individual pre-printed serialized number and the date on which the retail invoice is issued;

[PROVIDED that a dealer may maintain separate numerical series with distinct codes, either as prefix or suffix, for each place of business, in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;

PROVIDED FURTHER that such numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;]

(e) description, quantity, volume and value of goods sold and [services provided and the amount of tax charged thereon indicated separately]; and

(f) the signature of the selling dealer or his servant, manager or agent, duly authorized by him."

5. A plain and joint reading of the above provisions clarifies that the provision for tax credit is made in Section 9(1). The existence of any conditions covered by Section 9(2) acts as a prohibition for a dealer to make such tax credit. Section 9(8) imposes the condition that tax credit can be claimed after a dealer holds a tax invoice at the time of filing of return. In this case, the invoices relied upon by the purchasing dealer/assessee were described as "retail invoices". The Revenue's argument is that whilst many particulars described in Section 50(2) with respect to tax invoices are found in these documents, nevertheless, the omission to mention the TIN registration numbers of the purchasing dealer and the description of the document as a retail invoice defeated the assessee's claim for credit.

6. Having regard to the nature of the document, we are of the opinion that the strict interpretation of Section 50(2) in the facts of this case was unwarranted. One has to keep in mind the fact that Section 9(2) is the only provision which spells negative conditions or disqualifications for a dealer as it were in claiming credit. To read the provisions of the enactment as strictly as the VATO did in the present case where all the substantial and essential details existed in the document and choosing not to overlook the description (in other words, preferring form over substance) justify the ultimate conclusion of the VAT Tribunal. At the same time, this Court is also of the opinion that the observations of the Tribunal with regard to Section 50 cannot be countenanced as it were. The rationale for the legislature to have made a distinction between retail invoices and tax invoices – imposing additional conditions in the case of the latter cannot be lost sight of. It is significant that a retail invoice has per se not been defined and is conditional upon the prescription by the rule or other notifications under Section 50(5). Subject to the above clarification with respect to the Tribunal's observations of Section 50, no substantial question of law arises.

The appeal is accordingly dismissed along with the pending applications.

[2017] 55 DSTC 181 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Mr.Justice S. Muralidhar& Hon'ble Mr. Justice Chander Shekhar]

W.P. (C) 6093/2017 & CM No.25293/2017

On Quest Merchandising India Pvt. Ltd ... Petitioner

Versus

Government of NCT of Delhi & Ors. ... Respondent

W.P.(C) 4086/2013 & CM No.9620/2013

Suvasini Charitable Trust ... Petitioner

Versus

Government of NCT of Delhi & Ors. ... Respondent

W.P.(C) 2106/2015

Arise India Limited. ... Petitioner

Versus

Commissioner of Trade & Taxes, Delhi and Ors. ... Respondent

W.P. (C) 2383/2015

Vinayak Trexim ... Petitioner

Versus

Government of NCT of Delhi ... Respondent
Through Secy. (Finance) & Ors

W.P.(C) 4904/2015

K.R. ANAND ... Petitioner

Versus

Government of NCT of Delhi & Ors. ... Respondent

W.P.(C) 10708/2015

Aparici Ceramica ... Petitioner

Versus

Commissioner of Trade & Taxes, Delhi and Ors. ... Respondent

W.P.(C) 4573/2016 + W.P.(C) 4574/2016 + W.P.(C) 4704/2016 + W.P.(C) 4709/2016 + W.P.(C) 4710/2016 + W.P.(C) 4713/2016 & CM No.19649/2016 + W.P.(C) 4714/2016 + W.P.(C) 4788/2016

Arun Jain (HUF) ... Petitioner

Versus

Commissioner of Value Added Tax. ... Respondent

W.P.(C) 6583/2016 & CM No.26973/2016

Damson Technologies Pvt. Ltd. ... Petitioner

Versus

Commissioner of Trade & Taxes, Delhi and Ors. ... Respondent

W.P. (C) 11846/2016 & CM 46676/2016

Solvochem. ... Petitioner

Versus

Commissioner of Trade & Taxes, Delhi and Ors. ... Respondent

W.P. (C) 6804/2017

M/S Meenu Trading Co ... Petitioner

Versus

Commissioner of Trade & Taxes, Delhi and Anr. ... Respondent

W.P. (C) 7388/2017

Mahan Polymers ... Petitioner

Versus

Commissioner of Vat & Anr ... Respondent

Date of Judgment: 26thOctober, 2017

INPUT TAX CREDIT– SECTION 9 (2) (G), SECTION 40 (1), SECTION 50(2) – DVAT ACT, 2004 – WHAT SECTION 9 (2) (G) OF THE DVAT DOES IS GIVE THE DEPARTMENT A FREE HAND IN DECIDING TO PROCEED EITHER AGAINST THE PURCHASING DEALER OR THE SELLING DEALER OR EVEN BOTH WHEN IT FINDS THAT THE TAX PAID BY THE PURCHASING DEALER HAS NOT ACTUALLY BEEN DEPOSITED BY THE SELLING DEALER WITH THE GOVERNMENT OR HAS NOT BEEN LAWFULLY ADJUSTED AGAINST THE SELLING DEALER'S OUTPUT TAX LIABILITY AND CORRECTLY REFLECTED IN THE RETURN FILED BY SUCH SELLING DEALER IN THE RESPECTIVE TAX PERIODS. IT USES THE PHRASE, "DEALER OR CLASS OF DEALERS' WHICH COULD INCLUDE EITHER THE PURCHASING DEALER OR THE SELLING DEALER. IN THE SITUATION ENVISAGED BY SECTION 9 (2) (G) ITSELF, CLEARLY THE DEFAULTING PARTY IS THE SELLING DEALER. HE HAS COLLECTED THE VAT FROM THE PURCHASING DEALER AND FAILED TO DEPOSIT IT WITH THE GOVERNMENT OR FAILED TO LAWFULLY ADJUST IT AGAINST HIS OUTPUT TAX LIABILITY AND HAS FAILED TO CORRECTLY REFLECT THAT IN HIS RETURN – WHETHER FOR DEFAULTS COMMITTED BY SELLING DEALER, THE PURCHASING DEALER IS EXPECTED TO BEAR CONSEQUENCE OF BEING DENIED THE ITC.

Fact

AJ states that the selling dealers had duly filed their returns in DVAT-16 enclosing therewith the details of the purchases (Annexure 2A) and the details of sales (Annexure 2B). For the purposes of the ITC claimed by AJ for the aforementioned AYs, there was no mismatch reflected on the website of the Department. Despite this, the ITC was disallowed by the VATO concerned in respect of some of the purchases made on the ground that the selling dealer was suspicious. This was done by purportedly invoking Section 9 (2) (g) of the DVAT Act. AJ points out that as a result, it has had to pay VAT twice on the same transaction: once at the time of purchase of the goods by paying VAT to the selling dealer and second when the ITC was disallowed and AJ was asked to pay VAT on the full sale price as recovered by it at the time of sale without the ITC. This, according to AJ, is tantamount to shifting the incidence of tax from the selling dealer to the purchasing dealer which is unconstitutional and against the scheme of the DVAT Act. The challenge in the writ petitions filed by AJ is also to the impugned orders of default assessment of tax and penalty under Sections 32 and 33 of the DVAT Act. It may be noted that there is a distinction between those categories specified in Section 9 (2) (a) to (f) of the DVAT Act which disentitle to the grant of ITC and the one under Section 9 (2) (g). Whereas the conditions specified in Section 9 (2) (a) to (f) are those which are within the control of and can be vouched for by the purchasing dealer, the condition under Section 9 (2) (g) is not. It requires the purchasing

dealer to ensure, for the purposes of claiming ITC, that the selling dealer has deposited VAT with the Government or has lawfully adjusted it against such selling dealer's output tax liability. This is not within the control of the purchasing dealer. This is one of the major bones of contention in the present petition as will be seen hereinafter.

Held

The purchasing dealer can check on the web portal of the Department if the selling dealer is a fictitious person or a person whose registration stands cancelled. As long as the purchasing dealer has taken all these steps, he cannot be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability. The purchasing dealer can, of course, ascertain if there is any mismatch of Annexures 2A and 2B but assuming it is on account of the seller's default, there is little he can do about it. It is indeed strange that the note prepared for the Cabinet at the time of insertion of Section 9 (2) (g) in the DVAT Act did not mention Section 40A which had already been inserted by the DVAT Second Amendment Act, 2005 with effect from 16th November 2005. The note also did not take note of the practical difficulty that would be faced by the purchasing dealer in anticipating, even before entering into the transaction with the registered selling dealer holding a valid registration, that such selling dealer after collecting the tax from him was either not going to deposit it with the Government or lawfully adjust it against his output tax liability. This is a major omission of important factors which had a bearing on the ITC being claimed by a dealer. The Court respectfully concurs with the above analysis of Gheru Lal case and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer. The decision of the Supreme Court in Corporation Bank (supra) applies to the present case on all fronts. The Court explained there that the selling dealer collects tax as an agent of the Government. Therefore, the bona fide buyer cannot be put in jeopardy when he has done all the law requires him to do so. The purchasing dealer has no means to ascertain and secure compliance by the selling dealer. Again, in Central Wines, Hyderabad (supra) the Supreme Court inter alia observed that "the Seller acts as an agent of the buyer while collecting the tax". The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into

a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act. Resultantly, the default assessment orders of tax, interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2) (g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside.

Present for the Petitioner	:	Mr. Rajesh Mahna, Mr. Puneet Agarwal, Mr. Deepak Anand, Mr. Abhishek Boob, Mr. Ruchir Bhatia, Mr. Gaurav Khetrapal, Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. V. K. Jain, Mr. Raj. K Batra, Mr. Puneet Rai, Mr. Vasdev Lalwani, Mr. Rohit Gautam, Mr. Rahul Gupta, Advocates
Present for the Respondent	:	Mr. Satyakam, ASC for GNCTD, Mr. Anuj Aggarwal, ASC for GNCTD with Ms. Deboshree Mukherjee, Mr. Varun Nischal, Advocates

Cased Referred to

- *K.T. Moopil Nair v. State of Kerala AIR 1961 SC 552 and State of Kerala v. Haji and Haji AIR 1969SC 378.*
- *Commissioner of Customs, Amritsar v. Parker Industries 2007(207) ELT 658 (P&H)*
- *Shanti Kiran India Pvt. Ltd. v. Commissioner, Trade and Tax Deptt. (2013) 57 VST 405 (Delhi).*
- *Corporation Bank v. Saraswati Abharansala (2009) 19 VST84 (SC)*
- *State of Punjab v. Atul Fasteners Ltd. (2007) 7 VST 278 (SC)*
- *Gheru Lal Bal Chand v. State of Haryana (2011) 45 VST 195 (P&H)*
- *Assistant Collector of Central Excise, Bombay v. The Elphinstone Spinning & Weaving Mills Company AIR 1971 SC 2039*
- *GurshaiSaigal v. CIT AIR 1963 SC 1062*

- *Bajaj Tempo Ltd. v. CIT(1992) 3 SCC 78*
- *Aidek Tourism Services Pvt. Ltd. v. Commissioner of Customs (2015) 7 SCC 429*
- *Union of India v. Ranbaxy Lab. Ltd.(2008) 7 SCC 502*
- *Mahadev Enterprise v. State of Gujarat 2016 (92) VST 360 (Gujarat)*
- *Jinsasan Distributors v. CTO(2013) 59 VST 256 (Madras)*
- *Progressive Alloys (India) Pvt. Ltd. v. Commissioner of Trade & Taxes (decision dated 3rd February, 2016 in W.P. (C) No. 7434/2015)*
- *Infiniti Wholesale Limited v. Assistant Commissioner of Tax (2015) 82 VST 457 (Madras).*
- *Commissioner of Sales Tax, U.P. v. SanjivFabrics (2010) 9 SCC 630*
- *Jatinder Mittal Engineers and Contractors v.Commissioner of Trade & Taxes 2011 (46) VST 498 (Del)*
- *PentexSales Corporation v. Commissioner of Sales Tax, Delhi (2014) 67 VST 229(Delhi).*
- *Commissioner of Income Tax v. Manjunatha Cotton and Ginning Factory[2013] 359 ITR 565 (Kar.)*
- *Amrit Foods v. Commissioner (2005) 13SCC 419.*
- *Rajbala v. State of Haryana(2016) 2 SCC 445 and Municipal Committee v State of Punjab (1969) 1SCC 75*
- *State of Madhya Pradesh v. Kohli Brothers (2012) 6 SCC 312*
- *R.K. Garg v. Union of India(1981) 4 SCC 675*
- *Jayam& Co. v. Assistant Commissioner (2016) 96 VST 1 (SC)*

JUDGMENT

Dr. S. Muralidhar:

1.These writ petitions raise a challenge to the constitutional validity of Section 9 (2) (g) of the Delhi Value Added Tax, 2004 ('DVAT Act') as being violative of Articles 14 and 19 (1) (g) of the Constitution of India.

2. Illustratively, the facts relating to two of the writ petitioners, i.e. Suvasini Charitable Trust ('SCT') in W.P. (C) No. 4086/2013 and Arun Jain (HUF) in W.P. (C) Nos. 4573, 4574, 4704, 4709, 4710, 4713, 4714 and 4788/2016, are discussed.

Facts concerning Suvasini Charitable Trust

3. SCT is a charitable trust organization registered under the DVAT Act. It is engaged in the activity of providing food items in the Akshardham

Temple complex. It states that it has paid Value Added Tax ('VAT') on its purchases. It avails Input Tax Credit ('ITC') on the VAT paid on its sales. SCT states that it has made purchases from selling dealers registered under the DVAT Act on the strength of tax invoices which prove the collection of tax by the vendor from the purchasing dealer and is a valid document for availing ITC.

4. SCT states that on 1st June 2012, a fire broke out in the premises of the one of selling dealers - M/s. Vidya Polymers. The report of the Delhi Fire Service and the First Information Report ('FIR') lodged with the Station House Officer ('SHO'), Ashok Vihar Police Station are relied upon by SCT in support of this contention. It is stated that on account of said fire and destruction of records, M/s. Vidya Polymers failed to deposit the VAT collected from its buyers, which included SCT.

5. On 17th August 2012, the Value Added Tax Officer ('VATO') issued a default assessment order for the month of May, 2012 invoking Section 9 (2) (g) of the DVAT Act. Apart from raising a tax demand, another default assessment order imposing a penalty under Section 86 (10) of the DVAT Act was also passed by the VATO. SCT states that the above orders were passed without affording it an opportunity of being heard and solely on the basis that the ITC availed by SCT on the purchases did not match with the sale details filed by the vendor.

6. The appeals filed by SCT against the aforementioned default assessment orders were dismissed by the Objection Hearing Authority ('OHA') on 25th March 2013. These orders have also been challenged in W.P. (C) No. 4086 of 2013.

Facts concerning Arun Jain (HUF)

7. Arun Jain (HUF) ('AJ') deals in the sale and purchase of Foreign Trade Licenses ('FTLs') issued under Section 5 of Foreign Trade (Development & Regulation) Act, 1992. It is stated that the FTL is valid for 18 months from the date of issuance. FTLs are transferable and are covered under the definition of 'goods' and their sales are exigible to VAT under the DVAT ct.

8. AJ states that during the Assessment Years ('AY') 2013-14 and 2014-15, it made intra-state purchases from registered selling dealers and paid VAT on such purchases. AJ made sure that the selling dealer had a valid Tax Identification Number ('TIN') at the time of entering into the transaction. Later, AJ claimed ITC of the VAT so paid. 80% of the FTLs are sold to customers who actually utilize them to discharge the burden of

import duty. The purchase and sale of FTLs are duly recorded in the books of accounts and payments. It is stated that the payments made against purchases and payment received against sales are only through banking channels and are duly accounted for.

9. Under Section 26 of the DVAT Act read with Rule 28 of the Delhi Value Added Tax Rules, 2005 (DVAT Rules), a registered dealer is required to submit a return for each tax period. Along with the return, the dealer has to submit information regarding the summary of purchases and sales made and the VAT paid thereon in Annexures 2A and 2B respectively. It is pointed out that in case the selling dealer does not reflect the sales made to a particular purchasing dealer, a mismatch report gets generated on the website of the Department of Trade and Taxes ('Department'). Conversely, where the selling dealer correctly reflects the sales made, no mismatch will show up on the login ID of the purchasing dealer on the website.

10. AJ states that the selling dealers had duly filed their returns in DVAT-16 enclosing therewith the details of the purchases (Annexure 2A) and the details of sales (Annexure 2B). For the purposes of the ITC claimed by AJ for the aforementioned AYs, there was no mismatch reflected on the website of the Department. Despite this, the ITC was disallowed by the VATO concerned in respect of some of the purchases made on the ground that the selling dealer was 'suspicious'. This was done by purportedly invoking Section 9 (2) (g) of the DVAT Act. AJ points out that as a result, it has had to pay VAT twice on the same transaction: once at the time of purchase of the goods by paying VAT to the selling dealer and second when the ITC was disallowed and AJ was asked to pay VAT on the full sale price as recovered by it at the time of sale without the ITC. This, according to AJ, is tantamount to shifting the incidence of tax from the selling dealer to the purchasing dealer which is unconstitutional and against the scheme of the DVAT Act. The challenge in the writ petitions filed by AJ is also to the impugned orders of default assessment of tax and penalty under Sections 32 and 33 of the DVAT Act.

Relevant provisions of the DVAT Act

11. It is necessary to first examine the background to the introduction of Section 9 (2) (g) of the DVAT Act. The long title to the DVAT Act states that it is a statute "to consolidate and amend the law relating to levy of tax on sale of goods, tax on transfer of property involved in execution of works contracts, tax on transfer to right to use goods and tax on entry of motor vehicles by way of introducing a value added tax regime in the local areas to the National Capital Territory of Delhi." The DVAT Act came into effect with effect from 1st April 2005 by notification on 30th March 2005.

12. Under Section 40 (1) of the DVAT Act, only a registered dealer can collect any amount by way of tax under the DVAT Act. The further mandatory stipulation is that the said registered dealer can make such collection of the tax under the DVAT Act only in accordance with the DVAT Act and the DVAT Rules and on the rates specified under the DVAT Act. Section 40 (2) makes it clear that "Tax collected by a person who is not a registered dealer shall not be refunded and shall stand forfeited."

13. Further, under Section 50 (1) of the DVAT Act, it is only a registered dealer who can issue a 'tax invoice' to the purchaser containing the particulars specified in sub-section (2) of Section 50 and retain a copy thereof. The Explanation to Section 50 (1) of the DVAT Act states that registered dealer shall be authorized to issue tax invoices "only after a certificate of registration is issued by the Commissioner." It is, therefore, clear that it is only a registered dealer who can collect the DVAT under the DVAT Act and only such registered dealer can issue a tax invoice to the purchaser.

14. Section 50 (2) of the DVAT Act further states that the tax invoice issued in terms of Section 50 (1) of the DVAT Act shall contain the following particulars:

"(a) the words 'tax invoice' in a prominent place;

(b) the name, address and registration number of the selling registered dealer;

(c) the name and address of the purchaser and his registration number, where the purchaser is a registered dealer;

(d) an individual pre-printed serialised number and the date on which the tax invoice is issued. Provided that a dealer may maintain separate numerical series, with distinct codes either, as a prefix or suffix, for each place of business in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both; Provided further that such numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;

(e) description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon indicated separately;

(f) the signature of the selling dealer or his servant, manager or agent, duly authorized by him; and

(g) the name and address of the printer and first and last serial number of tax invoices printed and supplied by him to the dealer."

15. In a scenario where the purchasing dealer is, in fact, not a bona fide dealer himself or colludes with the selling dealer by entering into an agreement, arrangement or understanding to defraud the Department, Section 40A of the DVAT Act provides as under:

"40A. Agreement to defeat the intention and application of this Act to be void (1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not such dealer or person is a, party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section-

(a) "arrangement" includes any contract, agreement, plan or understanding whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(b) "tax advantage" includes, -

(i) any reduction in the liability of any dealer to pay tax,

(ii) any increase in the entitlement of any dealer to claim input tax credit or refund,

(iii) any reduction in the sale price or purchase price receivable or payable by any dealer."

16. Now turning to the provisions concerning ITC which are relevant for the purposes of the present petitions, Section 2 (1) (r) of the DVAT Act defines 'input tax' thus:

> "(r) "input tax" in relation to the purchase of goods, means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under this Act."

17. Section 9 (1) of the DVAT Act permits ITC, to a dealer who is registered, "in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making sales which are liable to tax under section 3 of this Act or sales which are not liable to tax under section 7 of the DVAT Act." The latter sales are those which involve export from Delhi either to other States or Union territories or to foreign countries.

18. Section 9 (2) of the DVAT Act sets out the conditions under which such tax credit or ITC would not be allowed. Sub-Clauses (a) to (f) specify certain kinds of purchases which would not be eligible for the claim of such ITC and they read as under:

> "(a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;
>
> (b) for the purchase of non-creditable goods;
>
> (c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person; Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;
>
> (d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act;
>
> (e) for goods purchased from a casual trader;
>
> (f) to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule."

19. There is yet another category of purchases on which ITC shall not be allowed. This is specified in Section 9 (2) (g) of the DVAT Act, which is

presently under challenge, and which reads as under: "(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period."

20. At this stage, it is necessary to understand the purpose behind introducing Section 9 (2) (g) in the DVAT Act by the DVAT (Amendment) Act, 2009 with effect from 1st April 2009. The relevant portion of the Cabinet note explaining the proposed amendment reads as under:

> "(b) It has been observed that in quite a few cases, the purchasing dealers claim ITC/Refund in respect of the purchases made from selling dealers. When the tax profiles/returns of the selling dealers are examined, it is found that negligible or no tax is deposited by the selling dealers. In such cases, it is difficult for the department to allow ITC/refund on the ground that no tax claimed to have been charged/collected by the selling dealers has actually been deposited with the department nor has it been lawfully adjusted. However, the purchasing dealer in such a case contends that purchases have been made from a dealer who is registered with the department and ITC is being claimed on the basis of tax invoices which fulfil the requirements of section 50 of the Act read with Rule 44 of the Delhi Value Added Tax Rules, 2005 (herein after referred to as "the Rules"). In several cases, the objections have been filed by such dealers against the orders of the assessing authority and consequent upon the dismissal of the objections, further appeals have been filed with the Appellate Tribunal. If more and more dealers resort to such practices, then, not only the government revenue is going to be affected adversely in a big way but the department will also have to contest plethora of litigation. For the purpose of protecting the interest of revenue and discouraging dealers from making purchases from bogus dealers, it is necessary to incorporate an appropriate provision in this regard by inserting a new clause after sub-section 2(f) of Section 9."

21. The Government of National Capital Territory of Delhi ('GNCTD') held consultations with the traders' associations. The minutes of one such meeting held on 26th November 2009 has been placed on the record. As regards Section 9 (2) (g), it states: "this was also discussed with the representatives and they agreed to the suggestion." In the attendance sheet of that date i.e. 26th November 2009, the presence of a sampling of

the traders' associations is reflected. Of course, this by itself will not decide the constitutional validity of the provision.

22. It may be noted that there is a distinction between those categories specified in Section 9 (2) (a) to (f) of the DVAT Act which disentitle to the grant of ITC and the one under Section 9 (2) (g). Whereas the conditions specified in Section 9 (2) (a) to (f) are those which are within the control of and can be vouched for by the purchasing dealer, the condition under Section 9 (2) (g) is not. It requires the purchasing dealer to ensure, for the purposes of claiming ITC, that the selling dealer has deposited VAT with the Government or has lawfully adjusted it against such selling dealer's output tax liability. This is not within the control of the purchasing dealer. This is one of the major bones of contention in the present petition as will be seen hereinafter.

23. To complete the examination of the relevant provisions of the DVAT concerning claim of ITC, it may be recalled that under the DVAT Act, returns have to be filed by the registered dealer under Section 26 thereof read with Rule 26 and 28 of the DVAT Rules. Under Rule 26 (1) of the DVAT Rules, the "tax period for all the registered dealers is a quarter i.e. 3 months." The tax return in Form DVAT-16 has to be filed within a period of 28 days from the end of the tax period in terms of Rule 28 (3) of the DVAT Rules. Under Section 3 (4) of the DVAT Act, the net tax, i.e. the tax payable by the dealer minus the ITC claimed in terms of Section 9 (1) read with Section 9 (2), has to be paid within twenty-one days of the conclusion of each calendar month. Such deposit of tax in DVAT Form-20 has to be enclosed with the return filed by such registered dealers. The details furnished with the returns, including the documents enclosed therewith, are to be treated as 'confidential' in terms of Section 98 (1) of the DVAT Act. The exceptions to this are specified in Section 98 (3) of the DVAT Act.

Submissions on behalf of the Petitioners

24. On behalf of the Petitioners, the following submissions were made by Mr. N. Venkatraman, the learned Senior Counsel and Mr. Puneet Agrawal, Mr. Rajesh Jain and Mr. Rajesh Mahana, the learned counsel appearing for the Petitioners:

(i) The objective of the DVAT Act is to charge tax only on 'value additions' and to avoid a cascading effect of taxes. Section 9 (2) (g), however, treats both the 'guilty purchasers' and the 'innocent purchasers' at par whereas they constitute two different classes. Where the 'guilty purchasers' in collusion with the 'guilty seller'

enter into a tacit agreement or understanding or arrangement to falsely claim ITC and cause loss of revenue, it is not as if the government is powerless to check such frauds. Section 40A of the DVAT Act has been specifically enacted for that purpose. Nevertheless, irrespective of whether the purchasing dealer is innocent, on account of subsequent conduct of the selling dealer, who has collected the VAT from the purchasing dealer and has failed to deposit it with the government or has failed to lawfully adjust it against his output tax liability, the purchasing dealer is made to suffer. This is violative of Article 14 of the Constitution inasmuch as it treats both the innocent purchasers and the guilty purchasers alike. In other words, it is submitted that by treating unequals equally the legislative measure is violative of Article 14 of the Constitution. Reliance is placed on the decision in *K.T. Moopil Nair v. State of Kerala AIR 1961 SC 552 and State of Kerala v. Haji and Haji AIR 1969 SC 378.*

(ii) Section 9 (2) (g) of the DVAT Act denies to a bona fide purchaser, the benefit of the ITC only because of the default of the selling dealer over whom such purchasing dealer has not control. This measure qua the purchasing dealer is arbitrary, irrational and unduly harsh and, therefore, violative of Article 14 of the Constitution. Reliance is placed on the decisions in Commissioner of Customs, *Amritsar v. Parker Industries 2007 (207) ELT 658 (P&H) and Shanti Kiran India Pvt. Ltd. v. Commissioner, Trade and Tax Deptt. (2013) 57 VST 405 (Delhi)*.

(iii) There are other statutory avenues available to the State to collect tax from the defaulting dealer. This includes recovery of the tax in case the dealer fails to deposit the same under Section 43 of the DVAT Act; forfeiture of security deposited under section 19 of DVAT Act read with Rule 22 of the DVAT Rules; recovery of tax as arrears of land revenue whereby the Commissioner prepares and issues to the defaulting selling dealer a recovery certificate and thereafter recovers the amount specified in the certificate by attaching the movable and immovable property of or even the arrest of the certificate-debtor; or appointing a receiver for the management of the movable and immovable properties of such certificatedebtor.

(iv) The only requirement of law, as far as the purchasing dealer wanting to avail the benefit of ITC is concerned, is that he has to make sure that the selling dealer is a registered dealer and has

issued the tax invoice in compliance with the requirement of the DVAT Act and the Rules made thereunder. Once the purchasing dealer demonstrates that he has complied with such requirement, he cannot be denied the ITC only because the selling dealer fails to discharge his obligation under the DVAT Act. From the point of view of the Petitioners in the present case, all of them as purchasing dealers have complied with the requirement of DVAT Act and all of them have ensured that the purchases made by them are in compliance with the requirements of the DVAT Act for claiming ITC. Reliance is placed on the decisions in *Corporation Bank v. Saraswati Abharansala (2009) 19 VST 84 (SC); State of Punjab v. Atul Fasteners Ltd. (2007) 7 VST 278 (SC) and Gheru Lal Bal Chand v. State of Haryana (2011) 45 VST 195 (P&H)*.

(v) The condition under Section 9 (2) (g) of the DVAT Act that the selling dealer has 'actually deposited' should be read as selling dealer "ought to have deposited" tax. Alternatively, the expression 'dealer' occurring therein should be read down to exclude a purchasing dealer who, on his part, has duly complied with the requirements under the DVAT Act. Reliance is placed on the decisions in *Assistant Collector of Central Excise, Bombay v. The Elphinstone Spinning & Weaving Mills Company AIR 1971 SC 2039 and Gurshai Saigal v. CIT AIR 1963 SC 1062*.

(vi) Reliance is also placed on the decisions in *Bajaj Tempo Ltd. v. CIT (1992) 3 SCC 78, Aidek Tourism Services Pvt. Ltd. v. Commissioner of Customs (2015) 7 SCC 429 and Union of India v. Ranbaxy Lab. Ltd. (2008) 7 SCC 502* to urge that the interpretation of Section 9 (2) (g) of the DVAT Act has to be in consonance with the object and purpose of the DVAT Act. It is argued that a pragmatic view must be taken and practical aspects considered before enforcing compliance. It is further urged that the ground realities of marketing and sales have to be considered while interpreting an exemption provision. It is pointed out that even if it is assumed that subsequent to the purchases made by the purchasing dealer, the registration of the selling dealer is cancelled, such cancellation cannot be given retrospective effect so as to deny the purchasing dealer the ITC in respect of the VAT paid by him.

(vii) Reliance is placed on the decisions in *Mahadev Enterprise v. State of Gujarat 2016 (92) VST 360 (Gujarat), Jinsasan Distributors v. CTO (2013) 59 VST 256 (Madras)* to urge that as long as there

is no mismatch of Annexures 2A and 2B, ITC cannot be denied. Reliance is placed on the decision of this Court in *Progressive Alloys (India) Pvt. Ltd. v. Commissioner of Trade & Taxes (decision dated 3rd February, 2016 in W.P. (C) No. 7434/2015)* and *Infiniti Wholesale Limited v. Assistant Commissioner of Tax (2015) 82 VST 457 (Madras)*.

(viii) Penalty under Section 86 (10) of the DVAT Act cannot be imposed unless it is shown that the return filed is misleading or deceptive. When the buying dealer has no means to ascertain the fact of non-deposit by the selling dealer of the VAT collected from the purchasing dealer, it cannot be assumed that the purchasing dealer has deliberately failed to pay tax. Therefore, Section 86 (10) cannot be applied straightaway. Reliance is placed on the decisions in *Commissioner of Sales Tax, U.P. v. Sanjiv Fabrics (2010) 9 SCC 630, Jatinder Mittal Engineers and Contractors v. Commissioner of Trade & Taxes 2011 (46) VST 498 (Del) and Pentex Sales Corporation v. Commissioner of Sales Tax, Delhi (2014) 67 VST 229 (Delhi)*.

(ix) The penalty under Section 86 (10) is not automatic and has to be preceded by the proper notice being served on the Assessee and an effective opportunity of being heard being given. Reliance is placed on the decision in *Commissioner of Income Tax v. Manjunatha Cotton and Ginning Factory [2013] 359 ITR 565 (Kar.) and Amrit Foods v. Commissioner (2005) 13 SCC 419*.

Submissions on behalf of the Department

25. In reply, Mr. Satyakam, the learned Additional Standing Counsel for the Department, first referred to the decisions in *Rajbala v. State of Haryana (2016) 2 SCC 445 and Municipal Committee v State of Punjab (1969) 1 SCC 75* to urge that arbitrariness cannot be a ground for challenging the statute as being violative of Article 14 of the Constitution. He further submitted that mere hardship caused by the impossibility of compliance of the provisions cannot be a ground for striking down a statute.

26. Reliance was also placed on the decisions in *State of Madhya Pradesh v. Kohli Brothers (2012) 6 SCC 312 and R.K. Garg v. Union of India (1981) 4 SCC 675* to urge that where a fiscal statute was being challenged, a greater leeway had to be given to the legislature and there had to be a presumption of soundness of the legislative policy. It was argued, therefore, that the Court is not to question legislative wisdom in such matters. He referred to the note prepared for consideration of the Cabinet prior to the

insertion of Section 9 (2) (g) of the DVAT Act and submitted that it was for sound reasons that the said provision was introduced since it was found that there were a large number of instances where selling dealers, after collecting tax, failed to deposit it with the Government.

27. Mr Satyakam placed extensive reliance on the decision of the Bombay High Court in *Mahalaxmi Cotton Ginning Pressing and Oil Industries v. State of Maharashtra (2012) 51 VST 1 (Bom.) where a similar provision under the Maharashtra Value Added Tax Act* ('MVAT Act') was upheld. He also referred to the fact that the Special Leave Petition filed against the aforesaid decision of the Bombay High Court was dismissed by the Supreme Court. He pointed out that the said decision was upheld by the Supreme Court in *Jayam & Co. v. Assistant Commissioner (2016) 96 VST 1 (SC)*. Mr. Satyakam also similarly relied on similar provisions of the Rajasthan VAT Act and the Gujarat VAT Act.

Analysis and reasons

28. At the outset, it requires to be understood that Section 2 (1) (r) of the DVAT Act implicitly recognizes that when the buyer pays the seller the price for the purchase of goods, such price is inclusive of the DVAT for which the seller is 'liable' to pay to the Government. Which is why it talks of payment by the buyer of the liability that is essentially that of the seller. VAT is an indirect tax, the incidence of which can be passed on and is in fact passed on by the seller to the purchaser.

29. To be eligible for ITC, the purchasing dealer who, apart from being registered under the DVAT Act, has to take care to verify that the selling dealer is also a registered dealer and has a valid registration under the DVAT Act. The second condition is that such registered selling dealer has to issue to the purchasing dealer a 'tax invoice' in terms of Section 50 of the DVAT Act. Such tax invoice would obviously set out the TIN number of the selling dealer. The purchasing dealer can check on the web portal of the Department if the selling dealer is a fictitious person or a person whose registration stands cancelled. As long as the purchasing dealer has taken all these steps, he cannot be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability. The purchasing dealer can, of course, ascertain if there is any mismatch of Annexures 2A and 2B but, assuming it is on account of the seller's default, there is little he can do about it.

30. Another difficulty that the purchasing dealer would face is that he would have no access to the return filed by the selling dealer particularly

since under Section 98 (1) of the DVAT Act those particulars are meant to be confidential. Under Section 98 (3) (j) of the DVAT Act, it is possible for the Commissioner, where he considers it desirable in the public interest, to publish such information. That hinges on the Commissioner placing those details in public domain. If the Commissioner has not placed such information in the public domain, then it is next to impossible for the purchasing dealer to ascertain the failure of the selling dealer to make a correct disclosure of the sales made in his return.

31. Again, it is not as if the Department is helpless if the selling dealer commits a default in either depositing or lawfully adjusting the VAT collected from the purchasing dealer. There are provisions in the DVAT Act, referred to hereinbefore, which empower the Department to proceed to recover the tax in arrears from the selling dealer. There is also Section 40A, in terms of which, a purchasing dealer acting in connivance with a selling dealer can be proceeded against.

32. It is indeed strange that the note prepared for the Cabinet at the time of insertion of Section 9 (2) (g) in the DVAT Act did not mention Section 40A which had already been inserted by the DVAT Second Amendment Act, 2005 with effect from 16th November 2005. The note also did not take note of the practical difficulty that would be faced by the purchasing dealer in anticipating, even before entering into the transaction with the registered selling dealer holding a valid registration, that such selling dealer after collecting the tax from him was either not going to deposit it with the Government or lawfully adjust it against his output tax liability. This is a major omission of important factors which had a bearing on the ITC being claimed by a dealer.

33. Indeed, what Section 9 (2) (g) of the DVAT does is give the Department a free hand in deciding to proceed either against the purchasing dealer or the selling dealer or even both when it finds that the tax paid by the purchasing dealer has not actually been deposited by the selling dealer with the Government or has not been lawfully adjusted against the selling dealer's output tax liability and correctly reflected in the return filed by such selling dealer in the respective tax periods. It uses the phrase, "dealer or class of dealers" which could include either the purchasing dealer or the selling dealer. In the situation envisaged by Section 9 (2) (g) itself, clearly the defaulting party is the selling dealer. He has collected the VAT from the purchasing dealer and failed to deposit it with the Government or failed to lawfully adjust it against his output tax liability and has failed to correctly reflect that in his return. For all these defaults committed by the selling dealer, the purchasing dealer is expected to bear the consequence

of being denied the ITC. It is this that is being questioned as violative of Article 14 of the Constitution.

34. First, there is the issue of Section 9 (2) (g) of the DVAT Act failing to distinguish between bona fide purchasing dealers and those that are not. While denial of ITC could be justified where the purchasing dealer has acted without due diligence, i.e. by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration, denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. This failure to distinguish bona fide purchasing dealers from those that are not results in Section 9 (2) (g) applying equally to both the classes of purchasing dealers. This would certainly be hit by Article 14 of the Constitution as explained in several decisions which will be discussed hereinafter.

35. In *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar [1959] 1 SCR 279,* the Supreme Court observed as under:

> "A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself."

36. In *K.T. Moopil Nair v. State of Kerala (supra)*, the Supreme Court was faced with a situation where an absence of classification led to a violation of Article 14 of the Constitution. The statute under challenge was the Travancore Cochin Land Tax Act, 1955 ('TCLT Act'). Section 4 of the TCLT Act laid down that a uniform rate of tax would be levied on all lands

in the State "of whatever description and held under whatever tenure", i.e. 2 paisa per cent which worked out to Rs. 2 per acre per annum. This uniform rate of tax was challenged on the ground that all lands in the State did not have same productivity quality; some were waste lands and others were in varying degree of fertility. The tax therefore weighed more heavily on owners of waste lands than the owners of fertile lands. In *Budhan Chaudhary v. State of Bihar [1955] 1 SCR 1045*, the Supreme Court had explained that while Article 14 forbids class legislation, "it does not forbid reasonable classification for the purposes of legislation." What, however, had to be fulfilled were the two tests: (i) "that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group" and; (ii) "that differentia must have a rational relation to the object sought to be achieved by the statute in question."

37. Applying the above criteria, in *K.T. Moopil Nair v. State of Kerala (supra)*, the Supreme Court concluded by a majority of 4:1 that the failure to make a classification between a productive and non-productive land for the purposes levy of such tax rendered the statute unconstitutional.

38. In State of Kerala v. Haji and Haji (supra) the Kerala Building Tax Act, 1961 ('KBT Act') was challenged. Section 4 of the KBT Act provided that every building, construction of which is completed on or after 2nd March 1961 and which has a building area of 1000 sq. ft. or more, would be liable for building tax payable by the owner of the building. The buildings having a total area of less than 1000 sq. ft. were not liable to pay tax. The Court found that no rational classification had been made by the legislature. It found that:

> "the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a. rational classification may itself in some cases operate as denial of equality."

39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide

transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

40. The need for the law to distinguish between honest and dishonest dealers was acknowledged by the Punjab and Haryana High Court in Gheru Lal Bal Chand v. State of Haryana (supra) where the constitutional validity of a similar Section 8 of the Haryana DVAT Act, 2003 ('HVAT Act') was being considered. It was held that:

> "In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages imposing any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.
>
> In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put

> on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in. The event where fraud, collusion or connivance is established between the registered purchasing dealers or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."

41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.

42. All this points to a failure to make a correct classification on a rational basis so that the denial of ITC is not visited upon a bonafide purchasing dealer. This failure to make a reasonable classification, does attract invalidation under Article 14 of the Constitution, as pointed out rightly by learned counsel for the Petitioners. This is also what weighed with the Court in *Shanti Kiran India Pvt. Ltd. (supra*) where it was observed as under:

> "In the present case, Section 9 (1) grants- input-tax credit to purchasing dealers. Section 9 (2), on the other hand lists out specific situations where the benefit is denied. The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation. placed by the Tribunal-that there is statutory, authority for granting input-tax

credit only to the extent tax is deposited by the selling dealer, is unsound and contrary, to the, statute, It is also iniquitous because an onerous burden is placed on the purchasing dealer - in the absence of clear words to that effect in the statute to keep a vigil over the amounts deposited by the selling dealer. The court, does not see any provision or methodology by which the purchasing dealer can monitor the selling dealers behaviour, 'vis-a-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to section 9 (2) is clarificatory. As observed earlier, Section 9 (2) is an exception to the general rule granting input-tax credit to dealers who qualify .for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such as the one spelt out in clause (g) and its addition in 2010, rules out legislative intention of its being a mere clarification of the law which always existed."

43. The Petitioners have argued that Section 9 (2) (g) also suffers from the vice of arbitrariness and is, on that ground, hit by Article 14 of the Constitution. There is some uncertainty as of today on whether a law can be struck down only on the ground of arbitrariness thereby attracting Article 14 of the Constitution. This doubt has been created by the decision of the Supreme Court in *Rajbala v. State of Haryana (supra)* and *Binoy Viswam v. Union of India (2017) 7 SCC 59* the correctness of both of which has been doubted by the Supreme Court in its recent 3:2 decision in *Shayara Bano v. Union of India 2017 (9) SCALE 178*, invalidating triple talaq where, in the majority opinion of Justice R. F. Nariman, after noting that the decision in *State of Andhra Pradesh v. McDowell & Co. (1996) 3 SCC 709* was on this point per incuriam, observed as under:

"53. However, in *State of Bihar v. Bihar Distillery Ltd., (1997) 2 SCC 453* at paragraph 22, in *State of M.P. v. Rakesh Kohli, (2012) 6 SCC 312 at paragraphs 17 to 19*, in *Rajbala v. State of Haryana & Ors., (2016) 2 SCC 445* at paragraphs 53 to 65 and 387 *Binoy Viswam v. Union of India (2017) 7 SCC 59* at paragraphs 80 to 82, McDowell (supra) was read as being an absolute bar to the use of "arbitrariness" as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, Mcdowell (supra) itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following McDowell (supra) are, therefore, no longer good law."

44. The above passage occurs in the opinion of Justice R. F. Nariman in which Justice U. U. Lalit joined. A separate opinion was given by Justice Kurien Joseph concurring with the above opinion of Justice Nariman in which it was observed:

> "In that view of the matter, I wholly agree with the learned Chief Justice that the 1937 Act is not a legislation regulating talaq. Consequently, I respectfully disagree with the stand taken by Nariman, J. that the 1937 Act is a legislation regulating triple talaq and hence, the same can be tested on the anvil of Article 14. However, on the pure question of law that a legislation, be it plenary or subordinate, can be challenged on the ground of arbitrariness, I agree with the illuminating exposition of law by Nariman, J." (emphasis supplied)

45. It would therefore appear that the decisions in *Rajbala v. State of Haryana (supra) and Binoy Viswam v. Union of India (supra)* which held that a legislation cannot be challenged on the ground of arbitrariness are no longer good law. In view of the uncertainty on this issue, the Court does not propose to examine it further in this batch of cases. In any event, the Court has, for the reasons explained, concluded that the failure of Section 9 (2) (g) of the DVAT Act to make a rational classification between purchasing dealers who are bona fide and those that are not renders it vulnerable to invalidation under Article 14 of the Constitution.

46.1 What remains is the discussion of the decisions relied upon by the Department to defend the validity of Section 9 (2) (g) of the DVAT Act as it stands. In *M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra (supra)* the Bombay High Court was concerned with interpreting Section 48 (5) of the MVAT Act, which reads as under:

> "(5) For the removal of doubt it is hereby declared that, in no case the amount of set off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government Treasury except to the extent where purchase tax is payable by the Claimant dealer on the purchase of the said goods effected by him:
>
> Provided that, where tax levied or leviable under this Act or in earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the government treasury for the purposes of this sub-section."

46.2 It can straightway be seen that Section 48 (5) of the MVAT Act is not an exact replica of Section 9 (2) (g) of the DVAT Act. For instance, Section 48 (5) of the MVAT Act requires the selling dealer to have "actually paid" the tax collected by him with the Government for the purposes of the purchasing dealer availing ITC, whereas Section 9 (2) (g) of the DVAT Act requires the selling dealer to either "deposit" the tax collected or lawfully adjust it against his output tax apart from correctly reflecting the sale in his returns. While interpreting those words 'actually paid', the Bombay High Court relied on the decisions in State of Madhya Pradesh v. Indore Iron and Steel Mills Private Limited (1999) 111 STC 261 (SC), N.B. Sanjana v. Elphinstone Spinning & Weaving Mills Co. Ltd. (1971) 1 SCC 337 (SC), Sulekh Ram & Sons v. Union of India (1978) 2 ELT J 525 (Del), which were confirmed by the Supreme Court in CCE v. Decent Dyeing Co. (1990) 45 ELT 201 (SC).

46.3 It also requires to be noted that the Bombay High Court was concerned with a situation where the purchase transactions disclosed by the purchasing dealer did not match the sale transactions disclosed by the selling dealer. In contrast, in the cases before this Court there is no instance where Annexures 2A and 2B have not matched.

46.4 Two of the critical paras in the Bombay High Court's decision in *M/s. Mahalaxmi Cotton Ginning Pressing & Oil Industries v. State of Maharashtra (supra)* are paras 48 and 55, which read thus:

> "48. In the context in which the words "actually paid" are used in the MVAT Act, "actually paid" means what has been as a matter of fact deposited in the treasury. Hence, in the context of the provisions of Section 48(5), we cannot accept the contention of the Petitioner that "actually paid ... in the government treasury" means or should be read to mean what tax ought to have been deposited but has not actually been deposited in the treasury. To accept the submission would be to rewrite the legislative provision. Moreover, the concept of a set off presupposes that tax has been paid in respect of the goods in respect of which a set off is claimed. To allow a set off though the tax has not been paid actually would be to defeat the legitimate interests of the Revenue. Hence, in the overall statutory scheme of Section 48; sub-section (5) has a rational basis and foundation. The liability to pay tax is that of the selling dealer. As the Constitution Bench held in *Tata Iron & Steel Co. Limited v. State of Bihar (1958) 9 STC 267 (SC); AIR 1958 SC 452* and in *George Oakes (Private) Limited v. State of Madras (1962) 13 STC 98 (SWC); AIR 1962 SC 1037*, whether the tax is passed

on by the selling dealer to the purchasing dealer is a matter of their contractual understanding. Once that is the position that has held the field in our jurisprudence for over fifty years and has been reiterated in *Khazan Chand v. State of Jammu and Kashmir (1984) 56 STC 214 (SC); AIR 1984 SC 762 and Central Wines v. Special Commercial Tax Officer (1987) 65 STC 48 (SC); (1987) 2 SCC 371*, by the Supreme Court, a dealer cannot obviate his liability to pay tax on his sale transaction, by claiming a set off and placing the responsibility to recover tax on an earlier link in the chain on the Revenue. To test the constitutionality of Section 48(5) one must ask oneself whether the legislature has acted discriminatorily or whether the provision is facially or ex facie discriminatory. Neither is the object or effect of Section 48(5) discriminatory. The State legislature was not bound to grant a set off. If the legislature had not granted a set off, that would not have a bearing on its competence or on constitutionality, since a tax on the sale of goods falls within the purview of Entry 54. In granting a set off, the legislature can impose conditions and that imposed in Section 48(5) is not lacking in rationality. Moreover, the scheme for set off in Section 48 has to be read in its entirety and as one cohesive whole. The legislature cannot be compelled to grant a set off, ignoring the conditions which it imposes. The conditions are not severable and are part of one integrated scheme."

xxx xxx xxx

55. The Punjab and Haryana High Court held that while the genuineness of a certificate and a declaration may be examined by the taxing authority, the onus cannot be placed on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The High Court held that the Department must allow the claim once a proper declaration is furnished. In the event of its falsity, the Department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception has been carved out in the event that fraud, collusion or connivance is established between the registered purchasing dealer or the immediate preceding selling dealer or the earlier dealer in the chain. The judgment of the High Court did not involve a challenge to a provision such as Section 48(5) of the MVAT Act, 2002. We may only note with the greatest respect and deference that while the High Court has relied upon the observations contained in the decisions of the Benches of two Learned Judges of the Supreme Court in *Atul Fasteners (2007) 7 VST 278 (SC) and in Corporation Bank (2009) 19 VST 84 (SC)*,

> the earlier decisions of the Constitution Benches in *TISCO (1958) 9 STC 267 (SC); AIR 1958 SC 452 and in George Oakes (1962) 13 STC 98 (SC); AIR 1962 SC 1037* were not perhaps drawn to the attention of the Court. Moreover, the decision in Elphinston Spinning AIR 1971 SC 2039 which construed the word "paid" in Rule 10 of the Central Excise Rules involved an issue of short levy. Finally we may note that a provision such as Section 48(5) which uses clear and express words such as that in "no case" shall a set off exceed the tax "actually paid" in the government treasury did not fall for consideration."

46.5 The reference, in para 48 above, to the decisions of the Supreme Court in *Khazan Chand v. State of Jammu and Kashmir (supra)* and *Central Wines v. Special Commercial Tax Officer (supra)*, was in the context of the liability to pay tax being essentially on the selling dealer. It was held there that a selling dealer cannot obviate his liability to pay tax on his 'sale transaction' by claiming set off and placing the responsibility to recover tax on an earlier link in the chain on the Revenue. It proceeds on the basis that the State Legislature is not "bound to grant a set off". It further states that the Legislature cannot be "compelled to grant a set-off, ignoring the conditions which it imposes".

46.6 In the present case, the conditions imposed for the grant of ITC are spelt out in Sections 9 (1) and (2) of the DVAT Act and have been adverted to earlier. The claim of the purchasing dealer in the present case is not that it should be granted that ITC de hors the conditions. Their positive case is that each of them, as a purchasing dealer, has complied the conditions as stipulated in Section 9 and therefore, cannot be denied ITC because only selling dealer had failed to fulfil the conditions thereunder. More importantly, the Court finds that there is no provision in the MVAT Act similar to Section 40A of the DVAT Act. Section 40A of the DVAT Act takes care of a situation where the selling dealer and the purchasing dealer act in collusion with a view to defrauding the Revenue. In fact, the operative directions in *Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra)* indicate that such a measure was suggested by the State Government itself to go after defaulters, i.e. selling dealers failing to actually pay the tax. The Department there undertook to upload on its website the details of the defaulting dealers. It was further undertaken that once there was a final recovery of the tax from the selling dealer, refund would be granted to the purchasing dealer.

46.7 Mr. Satyakam has placed extensively reliance on para 55 of the decision of the Bombay High Court where that High Court disagreed with the conclusions of the Punjab & Haryana High Court in *Gheru Lal Bal Chand v. State of Haryana (supra)*. The Bombay High Court appears to

have distinguished the said decision only because there was no provision in the HVAT Act similar to Section 48 (5) of the MVAT Act which required the tax to be 'actually paid' into the Government treasury. In the considered view of the Court, the decision of the Bombay High Court in *Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra)* turned on the peculiar wording of Section 48 (5) of the MVAT Act. Secondly, the fact situation where the transactions disclosed by the purchasing dealer and the selling dealer did not match does not exist in the present cases. Consequently, the Court does not consider the decision of the Bombay High Court in *Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra)* to be of assistance to the Department. The fact that the SLP against the said decision was dismissed by the Supreme Court does not alter the position.

47.1 Turning now to the decision of the Madras High Court in *Jayam & Co. v. Assistant Commissioner (supra)*, it is seen that in the said case, the parties agreed that the sale/purchase price as reflected in the invoice would be the gross price. Discounts would later be passed by way of credit notes. The Madras High Court held that, insofar as the Tamil Nadu Value Added Tax ('TNVAT') was concerned, the dealer had to produce a tax invoice evidencing the amount of input tax. It was further held that discount passed on through credit notes could not be considered for determination of 'price' and that the "tax invoice alone" ought to be considered for determining the tax liability.

47.2 The provision under challenge in *Jayam & Co. v. Assistant Commissioner (supra)* was Section 19 (20) of the TNVAT Act which reads as under:

> "(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."

47.3 Here again, it can be seen that Section 9 (2) (g) of the DVAT Act is differently worded. Three conditions that were mandated by the above provision as noted by the Supreme Court were as under:

> "(a) ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.
>
> (b) Concession of ITC is available on certain conditions mentioned in this Section.
>
> (c) One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect evidencing the amount of input tax."

47.4 The Court in Jayam & Co. went strictly by the wording of the above provision to determine what would form the subject matter of the tax liability and concluded that it was only the price indicated in the tax invoice and not price as reduced by the credit note. The Court fails to appreciate how the aforementioned decision can be of any assistance to the Department in the present case since the provision which the Court is concerned with herein is in a different context and, therefore, differently worded as well.

48. The decision of the Supreme Court in Corporation Bank (supra) applies to the present case on all fronts. The Court explained there that the selling dealer collects tax as an agent of the Government. Therefore, the bona fide buyer cannot be put in jeopardy when he has done all the law requires him to do so. The purchasing dealer has no means to ascertain and secure compliance by the selling dealer. Again, in Central Wines, Hyderabad (supra) the Supreme Court inter alia observed that "the Seller acts as an agent of the buyer while collecting the tax".

Reading down

49. The question that next arises is whether Section 9 (2) (g) of the DVAT Act, for reasons already explained, requires to be struck down as violative of Article 14 or can be saved from invalidity by any known interpretational device?

50. The offending part of Section 9 (2) (g) of the DVAT Act is the expression 'the dealers or class of dealers' occurring therein which, as it presently stands, makes no distinction between selling and purchasing dealers and further between bona fide purchasing dealers and those not bonafide.

51. In *Delhi Transport Corporation v. DTC Mazdoor Congress AIR 1991 SC 101*, a Constitution Bench of the Supreme Court explained in what cases the doctrine of 'reading down' of statutes to save their constitutionality could be deployed:

> "The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it constitutional the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any

of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. If the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. The doctrine can never be called into play where the statute requires extensive additions and deletions."

52. It was further explained in the same decision as under:

"The Courts, though, have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the constitution, resort cannot be had to the doctrine of reading down to blow life into the void law to save it from unconstitutionality or to confer jurisdiction on the legislature."

Conclusions

53. In light of the above legal position, the Court hereby holds that the expression 'dealer or class of dealers' occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression 'dealer or class of dealers' in Section 9 (2) (g) is 'read down' in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the

Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

55. Resultantly, the default assessment orders of tax, interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2) (g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside.

56. The writ petitions and applications are disposed of in the above terms but, in the circumstances, with no orders as to costs.

[2017] 55 DSTC 211 – (Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

[Hon'ble Justice S. Muralidhar and Hon'ble Justice Chander Shekhar]

W.P.(C) 4597/2017 & C.M. No. 20095/2017 (Stay)

AIMIL LTD. ... Petitioner

Versus

Commissioner Of Trade & Taxes ... Respondent

Date of Order : May 24, 2017

OBJECTION – WHETHER OHA HAS POWERS TO REMAND THE CASE TO AA/NA?

REMANDED ASSESSMENT – LIMITATION – WHETHER LIMITATION OF SECTION 34(2) OF THE DVAT ACT APPLICABLE TO REMAND BY THE OHA? – WHETHER WRIT OF DEMAND CAN BE ISSUED WITHOUT PASSING OF THE REMANDED ASSESSMENT?

The assessments were framed for the AY 2006-07 and AY 2007-08, which were challenged by filing objections and OHA vide order dated 24th June, 2011 and 18th July, 2012 directed AA/NA to pass fresh order after affording appellant another opportunity to present the above mentioned statutory forms and other documents as per law and due verification for admissibility thereof.

For six years thereafter, no steps have been taken by the VATO. Neither any hearing notice for the remanded assessment proceedings was

issued nor any default assessment made in DVAT-24 in terms of Rule 36 of the DVAT Rules. It is only on 7th March, 2017 that the impugned writ of demand was issued by the Assistant Commissioner, Ward No. 203 calling upon the Petitioner to pay an amount of Rs. 59,41,468/- for the period of AY 2006-07, Rs. 89,33,886/- for the period of 2007-08. This was followed by an order dated 12th April 2017 whereby the VATO without giving any hearing passed an order imposing tax of Rs.15,48,353/- and interest of Rs.23,17,439 therein.

In W.P.(C) No. 4597/2017, the Petitioner has challenged the said orders insofar as it raises the demand for AY 2006-07 and in W.P.(C) No.4599/2017the demand raised for AY 2007-08 has been challenged.

Mr Rajesh Jain, the learned counsel for the Petitioner pointed out, that under the DVAT Act the OHA does not have the power to remand matters to the VATO. Still, when the matters were remanded to the VATO, the fresh assessment orders in terms of Section 34(2) of the DVAT Act had to be passed within one year from the date of the order of the OHA. The demands raised on 12th April 2017 were far beyond the period envisaged under the DVAT Act. It is further pointed out by Mr Jain that under Section 30 of the DVAT Act, no claim can be made by the Commissioner "for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount." In the present case, the assessment earlier made was set aside. In the present case, on 12th April 2017, the VATO further directed the Petitioner to pay the demanded amount of tax and interest for each of the AYs in question i.e., AY 2006-07 and AY 2007-08. These orders, too, could not have been passed without proper assessment being made pursuant to the OHA's earlier orders dated 24th June, 2011 and 18th July, 2012.

Held

The writ petitions are allowed. The writs of demand dated subsequent orders dated 7th March 2017 and the orders dated 12th April, 2017 issued by the VATO/ Assistant Commissioner, Ward No. 203 (KCS) for AYs 2006-07 and 2007-08 are hereby quashed.

Present for Petitioner	:	Mr. Rajesh Jain, Advocate with Mr.Virag Tiwari,
Present for Respondent	:	Advocate for the Mr. Manmeet Singh Arora, Advocate with Ms. Anita Bharal, VATO, Ward No.203.

Order

Dr. S. Muralidhar, J.:

C.M. No. 20096/2017 (for exemption) in W.P.(C) No. 4597/2017
C.M. No. 20100/2017(for exemption) in W.P.(C) No. 4599/2017

1. Allowed, subject to all just exceptions W.P.(C) No. 4597/2017 & W.P.(C) No. 4599/2017

2. These two petitions are filed by AIMIL Ltd. under Article 226 of the Constitution of India.

3. The prayers in the W.P.(C) No. 4597/2017 are as under:

"(a) set aside and quash the impugned order of Writ of demand dated 7.3.2017 as it is non-est.;

(b) set aside and quash the impugned order dated 12.4.2017 for the 2006-07 issued by the VATO/ Asstt. Commissioner (W-203) as being barred by limitation;

(c) issue a Writ of Certiorari or any other direction,

(d) issue a Writ of Mandamus or any other direction or pass any other order;

(e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. The prayers in W.P.(C) No. 4599/2017 reads as under:

"(a) set aside and quash the impugned order of Writ of demand dated 7.3.2017 as it is non-est;

(b) set aside and quash the impugned order dated 12.4.2017 for the 2007-08 issued by the VATO/ Asstt. Commissioner (W-203) as being barred by limitation;

(c) issue a Writ of Certiorari or any other direction,

(d) issue a Writ of Mandamus or any other direction or pass any other order;

(e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

5. The facts in brief are that the Petitioner, which is a registered dealer under the Delhi Value Added Tax Act, 2004 ('DVAT Act'), is engaged in the business of manufacture and resale of scientific instruments. It was issued a notice of default assessment on 12th March, 2010 for the tax period 1st April, 2006 to 30th June, 2006 (1st Quarter of Assessment Year ('AY') 2006-07) with a demand of tax of Rs. 2,57,068/-. On 15th March, 2010 for the 2nd Quarter of AY 2006-07, another default assessment notice was issued demanding tax in the sum of Rs. 1,58,936/- for the tax period 1st July, 2006 to 30th September, 2006. On the same date, demands were raised for the 3rd and 4th Quarter of AY 2006-07 vide separate orders for the periods 1st October, 2006 to 31st December, 2006 and 1st January, 2007 to 31st March, 2007, this time including interest on account of denial of export benefits.

6. Aggrieved by the default assessment for the tax and interest under Section 9(2) of the Central Sales Tax Act, 1956 ('CST Act') four objections were filed by the Petitioner against the aforementioned demands under Section 74(1) of the DVAT Act. On 24th June, 2011, the Objection Hearing Authority ('OHA') disposed of all four objections. The operative portion of the said order reads as under:

> "I have gone through the documents submitted by the dealer in support of the objection against default assessment and have also heard the arguments of the counsel on this point whereupon I am of the considered view that since the dealer is in possession of above said statutory forms, it would be fair to consider the said forms for the purpose of exemption. The VATO concerned is directed to consider the above mentioned forms pertaining to year 2006-07 subject to verification/genuineness of the said forms and transactions related thereto as per provisions of the CST Act & Rules there under read with DVAT Act, 2004 and the Rules framed there under. Short amount of forms for 2006-07 shall be taxed accordingly. As regards export sale though Customs certificate is not there, they state that they have all documents in support of movement & export. The Assessing Authority shall examine relevant records in support of export sales, and in case the same is prima facie appears to have been done, interest may not be attracted.
>
> Ordered accordingly."

7. For six years thereafter, no steps have been taken by the VATO. Neither any hearing notice for the remanded assessment proceedings was issued nor any default assessment made in DVAT-24 in terms of Rule

36 of the DVAT Rules. It is only on 7th March, 2017 that the impugned writ of demand was issued by the Assistant Commissioner, Ward No. 203 calling upon the Petitioner to pay an amount of Rs. 59,41,468/- for the period of AY 2006-07, Rs. 89,33,886/- for the period of 2007-08 and other amounts due for the AYs 2008-09, 2009-10, 2010-11 and 2011-12. This was followed by an order dated 12th April 2017 whereby the VATO without giving any hearing passed an order imposing tax of Rs.15,48,353/- and interest of Rs.23,17,439 therein. In W.P.(C) No. 4597/2017, the Petitioner has challenged the said orders insofar as it raises the demand for AY 2006-07.

8. As far as the W.P.(C) No.4599/2017 is concerned, the facts are more or less similar. The petition challenges the four orders of default assessment of tax issued under Section 9(2) of the CST Act read with Section 32 of the DVAT Act dated 31st May, 2011 and 2nd June, 2011. Objections were filed before the OHA on 28th July, 2011 which was disposed of by it on 18th July, 2012.

9. The operative portion of the said order of the OHA in those objections of 2007-08 reads as under:

> "After going through the facts and circumstances of the case as also the judgment of the Hon. Supreme Court in the case of *State of A.P. Vs. Hyderabad Asbestos Cement (1994) 94 STC 410* (wherein it was held that if there is sufficient cause for not producing the "prescribed declarations" at assessment stage, these may be admitted at the appellate stage) and also the judgment of the Hon. High Court in the case of *M/s Kirloskar Electric Co. Vs. CST, Delhi (83 STC 485)* wherein it was held that "the State was entitled only to the tax which was legitimately due to it. Even though the Forms were produced after the assessment has been completed, it would not be fair or just not to allow the legitimate deduction". I feel that in the interest of justice another opportunity may be afforded to the appellant to furnish the above mentioned statutory Form which is now available with him and allow the benefit of these statutory forms to the extent mentioned above.
>
> In view of the observations made above, the AA/NA is directed to pass fresh order after affording appellant another opportunity to present the above mentioned statutory forms and other documents as per law and due verification for admissibility thereof.
>
> The Objector is directed to appear before the AA/NA on 31.07.2012."

10. Here again, nothing happened for nearly 5 years. The impugned writ of demand was issued on 7th March, 2017 which has been referred to hereinabove. This was followed by a writ of demand dated 12th April 2017 whereby the VATO without hearing the Petitioner passed an order imposing tax of Rs.28,99,519/- and interest of Rs.39,03,626.

11. This Court has, in similar circumstances, in its judgment in *Shaila Enterprises v. Commissioner of Value Added Tax (2016) 94 VST 367 (Del)* set aside the demands after observing that the failure of the VATO to comply with the time bound directions of the OHA would be fatal to the demands which are raised far beyond the time period envisaged for completion of the fresh assessment proceedings. It may be noted that the SLP filed by the Department against the aforementioned judgment was dismissed by the Supreme Court on 4th January, 2017.

12. In the present case, the relevant file has been produced by the VATO before the Court. There is absolutely no noting on the file to indicate what happened to the orders passed by the OHA. There appears to be complete failure on the part of the VATO to act in accordance with law and, in particular, to abide by the order of the superior authority, in this case, the OHA and to carry out the mandate of the OHA's orders.

13. It is pointed out by Mr Rajesh Jain, the learned counsel for the Petitioner, that under the DVAT Act the OHA does not have the power to remand matters to the VATO. Still, when the matters were remanded to the VATO, the fresh assessment orders in terms of Section 34(2) of the DVAT Act had to be passed within one year from the date of the order of the OHA. The demands raised on 12th April 2017 were far beyond the period envisaged under the DVAT Act.

14. It is further pointed out by Mr Jain that under Section 30 of the DVAT Act, no claim can be made by the Commissioner "for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an assessment for the amount." In the present case, the assessment earlier made was set aside. In the present case, on 12th April 2017, the VATO further directed the Petitioner to pay the demanded amount of tax and interest for each of the AYs in question i.e., AY 2006-07 and AY 2007-08. These orders, too, could not have been passed without proper assessment being made pursuant to the OHA's earlier orders dated 24th June, 2011 and 18th July, 2012.

15. Mr Manmeet Singh Arora, learned counsel for the Respondent DVAT Department submitted that the above issues could be examined

by the OHA. With the impugned orders bristling with so many obvious illegalities, the question of the Petitioner now being relegated to the OHA, as suggested by the counsel for the Respondent, does not arise. It would interminably delay the proceedings which in any event stand legally vitiated.

16. The writ petitions are allowed. The writs of demand dated subsequent orders dated 7th March 2017 and the orders dated 12th April, 2017 issued by the VATO/ Assistant Commissioner, Ward No. 203 (KCS) for AYs 2006-07 and 2007-08 are hereby quashed.

[2017] 55 DSTC 218 – (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[Diwan Chand: Member (A) and M.S. Wadhwa: Member (J)]

Appeal No. 414-415/ATVAT/13-14
Assessment year: 2009-10

M/s Organising Committee
Commonwealth Games, 2010
New Delhi City Centre Tower-II
Opposite Jantar Mantar
Jai Singh Road, New Delhi-110001 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order : 29.06.2017

DEALER – DEFINITION OF DEALER U/S 2(J) OF THE DVAT ACT, 2004 – WHETHER INCLUDES "ORGANISING COMMITTEE"? – WHETHER "ORGANISING COMMITTEE" LIABLE TO DEDUCT TDS ON THE WORKS AWARDED TO CONTRACTORS?

Facts of the case

Facts of the case briefly stated are that the VATO-HQ (Special Zone) issued a notice to Organising Committee (hereinafter called the OC) under Section 59 (2) of the DVAT Act wherein it was stated that the VATO-HQ (Special Zone) had received information that the OC had awarded work contracts for Rs.41,50,98,132/- to the contractors during Commonwealth Games and that as per provisions of Section 36 A of the said Act the OC was liable to deduct Tax at Source at the rate of 2% and 4% from the payments made to the Registered and unregistered contractors respectively and OC had failed to comply with the said provision of the Act and rendered itself liable for recovery of due tax and penalty and was called upon to produce all relevant documents within 15 days of the receipt of the said notice. The assessment was framed holding OC liable

Aggrieved with the default assessments orders, the appellant filed objections before the Ld OHA and argued that the appellant is not a dealer/ person required to deduct TDS under the provisions of DVAT Act, the contracts awarded by the appellant were with respect to NDCC building which was taken on rent/lease for the purpose of housing the office of the objector for conduct of commonwealth games. It was argued that there

was no transfer of property in goods hence the activity was not a works contract. During the proceedings the objector/appellant also stated that out of the mentioned contractors the two M/s Russel Interiors Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd have not given proof of deposit of any TDS with the department. However, remaining four contractors have deposited TDS. Further submission was made that as per the terms of agreement entered into with contractors the liability to pay/deposit applicable tax/ duties directly rest with the contractor and that OC does not have liability to pay any taxes, levies duties etc. The OHA held that the liability to pay tax, interest and penalty against the two defaulting contractors mentioned shall remain on the objector. Assessing Authority is therefore directed to recalculate the liability after giving credit to the payments made by the remaining contractors as may be verified from record."

Being aggrieved the Appellant filed appeal before the Hon'ble Tribunal on various grounds. The main contention of the appellant was that the work executed by the appellant does not fall within the definition of the term works contract as the building is not owned by it, and he is not a dealer.

Held

we have noticed that the appellant falls within the definition of the dealer and has engaged the contractors to get the works executed in connection with the holding of the games and has made payment to the contractors towards works executed by them. Appellant was required to make deduction of TDS as per section 36A of the DVAT Act which it failed to do. Since no document or evidence in respect of M/s Russel International Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd has been filed by the appellant either before the authorities below or before us, we do not find any ground to interfere with the impugned orders and accordingly the impugned orders so far as these have upheld the demands created on account of non-deduction of TDS by the appellant in respect of two contractors M/s Russel International Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd, are upheld.

Consequently the appeals preferred by the appellant are dismissed and the impugned orders are upheld. Ordered accordingly.

Present for the Appellant	:	Sh. Sudip Adv., & Ms Anuradha Sharma, Advocate
Present for the Respondent	:	Sh. Pradeep Tara, Advocate

ORDER

1. This order shall dispose of the above-noted appeals filed against the impugned orders dated 01.02.2013 passed by the Special Commissioner-I, hereinafter called the Objection Hearing Authority (in short the OHA) who vide aforesaid orders partly accepted the objections and upheld the default assessment orders dated 13.03.2012 to the extent the objections were rejected.

2. Facts of the case briefly stated are that the VATO-HQ (Special Zone) issued a notice to Organising Committee (hereinafter called the OC) under Section 59 (2) of the DVAT Act wherein it was stated that the VATO-HQ (Special Zone) had received information that the OC had awarded work contracts for Rs.41,50,98,132/- to the contractors during Commonwealth Games and that as per provisions of Section 36 A of the said Act the OC was liable to deduct Tax at Source at the rate of 2% and 4% from the payments made to the Registered and unregistered contractors respectively and OC had failed to comply with the said provision of the Act and rendered itself liable for recovery of due tax and penalty and was called upon to produce all relevant documents within 15 days of the receipt of the said notice.

3. After considering the replies submitted by the appellant, during default assessment proceedings the VATO noticed that OC had awarded contracts to six contractors for carrying out certain works contract activities in the building for GHQ NDCC, Jai Singh Road, New Delhi. OC made payments to these contractors as per under mentioned details:

Sl. No.	Name of Contractor	Payment Made
1	RG Builders	1,66,85,554
2	DASS Innovators (P) :td	3,77,09,924
3	Russel International P Ltd	7,15,12,644
4	HS Oberoi Buildtech P Ltd	6,85,22,008
5	Ultimate International Pvt Ltd	5,35,11,408
6	Sharma Construction	2,51,83,493
	Total	27,31,25,031

4. Aggrieved with the default assessments orders, the appellant filed objections before the Ld OHA and argued that the appellant is not a dealer/ person required to deduct TDS under the provisions of DVAT Act, the

contracts awarded by the objector/appellant were with respect to NDCC building which was taken on rent/lease for the purpose of housing the office of the objector for conduct of commonwealth games. It was argued that there was no transfer of property in goods hence the activity was not a works contract. During the proceedings the objector/appellant also stated that out of the mentioned contractors the two M/s Russel Interiors Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd have not given proof of deposit of any TDS with the department. However, remaining four contractors have deposited TDS. Further submission was made that as per the terms of agreement entered into with contractors the liability to pay/deposit applicable tax/duties directly rest with the contractor and that OC does not have liability to pay any taxes, levies duties etc.

5. Ld OHA rejected the objections by observing as under:-

> "11. The contention of the objector that the premises where the said building activities had taken place did not belong to the objector does not help the objector in escaping the tax liabilities since the above cited provisions of law clearly establish that the responsibility devolves on the person responsible for making payments irrespective of ownership of the premises. The penalty for not getting registered with the Department levied on objector is also found to be due
>
> 12. Taking all factors into consideration it is held that the liability to pay tax, interest and penalty against the two defaulting contractors mentioned in para 8 above shall remain on the objector. Assessing Authority is therefore directed to recalculate the liability after giving credit to the payments made by the remaining contractors as may be verified from record."

6. Aggrieved with the orders of the OHA to the extent it upheld the default assessments orders passed by the VATO, the appellant has come in appeal and assailed the impugned order on the following grounds:-

1. That the impugned order of assessment of tax, interest and penalty under section 33 of the DVAT Act 2004 is illegal both on facts and Law.

2. That the respondent failed to appreciate and consider that the Appellant is not a dealer / person required to deduct TDS under the provisions of DVAT Act 2004.

3. That respondent failed to appreciate that the contracts awarded by the appellant was with respect to the NDCC building which

was on rent for the purpose of housing the office of the Appellant for conducting the Common Wealth Games 2010 Delhi and there was no transfer of property in goods in as much as the same was not a work contract.

4. That the respondent failed to appreciate and consider the reply of the Appellant wherein it was clearly stated that the appellant had asked the vendors to deposit tax if applicable on the same and all the vendors whose scope of work was taxable had deposited the tax and their challans are enclosed.

5. That the respondent failed to find out the tax deposit status of contractors M/s Russell Interiors P. Ltd and M/s H.S. Oberoi Buildtech Pvt. Ltd. when their TIN numbers were available with the department. From the above dealers Appellant found that the M/s. H.S. Oberoi Buildtech Pvt. Ltd had already deposited the Tax.

6. That the respondent failed to appreciate that since the contractors had already deposited the applicable tax on the contracts executed by the Appellant with them no further tax could be imposed on the Appellant as the same would amount to double taxation on the same transaction which is illegal.

7. That the respondent failed to appreciate that since applicable tax was already deposited by the contractors there was no question of imposing penalty on the Appellant. Neither any notice regarding penalty was given to the Appellant nor a proper hearing provided where the Appellant could explain that the Appellant was not liable for any penalty.

8. That the respondent failed to appreciate that Appellant is Society registered under the Societies Registration Act, 1860, with the joint consent of the Indian Olympic Association and the Government of India and was constituted with the sole purpose for organising, conduct, supervision and delivery of the Commonwealth Games, 2010 Delhi in India.

9. That the respondent failed to appreciate that before imposing the penalty on Appellant they could inquire from the contractors who are in their complete hold about their tax and duty liability because the contactors are the private entities and the Appellant is a society funded by the Government of India.

7. We have heard Sh Sudip Kumar, Adv., Ld Counsel for the Appellant and Sh. Pradeep Tara, Adv., Ld Counsel for the Revenue and gone through the record of the case.

8. Before proceeding further it is necessary to notice the relevant provisions in the DVAT Act, 2004 and the rules framed thereunder:-

> (j) "dealer" means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business , buys or sells goods in Delhi directly or otherwise , whether for cash or for deferred payment or for commission , remuneration or other valuable consideration and includes,-
>
> (i) a factor, commission agent, broker, del credere agent or any other mercantile agent by whatever name called, who, for the purposes of or consequential to his engagement in or in connection or incidental to or in the course of his business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not;
>
> (ii) a non-resident dealer or as the case may be , an agent, residing in the State of a non-resident dealer , who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection or incidental to or in the course of his business;
>
> (iii) a local branch of a firm or company or association of persons, outside Delhi where such firm, company, association of persons is a dealer under any other sub-clause of this definition;
>
> (iv) a club, association, society, trust, or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;
>
> (v) an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;
>
> (vi) a casual trader ;

(vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation.- For the purposes of this clause, each of the following persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

(i) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);

(ii) Departments of Union Government, State Governments and Union territory Administrations;

(iii) Local authorities, Panchayats, Municipalities, Development Authorities, Cantonment Boards;

(iv) Public Charitable Trusts;

(v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;

(vi) Incorporated or unincorporated societies, clubs or other associations of persons;

(vii) Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;

(viii) Delhi Transport Corporation;

(ix) Shipping and construction companies, air transport companies, airlines and advertising agencies.

(zo) ‘’works contract” includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

Section 36A Tax deducted at source

(1) Any person, not being an individual or a Hindu undivided family, who is responsible for making payment to any dealer (hereinafter in this section referred to as “the contractor”) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, for value exceeding twenty thousand rupees or such amount as may, by order in writing published in official Gazette, be notified by the Commissioner from time to time, shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of four percent.

PROVIDED that the rate of deduction of tax (TDS) shall be 4% in case of contractors not registered under this Act

(IA) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, in pursuance of a contract with the sub-contractor, for value exceeding twenty thousand rupees or such amount as may, by order in writing and published in the official Gazette, be notified by the Commissioner from time to time, for the transfer of property in goods (whether as goods or in some other form) involved in the execution, whether wholly or in part, of the works contract undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or any other mode, deduct an amount equal to four percent of such payment or discharge, purporting to be part of full amount of the tax payable under this Act.

PROVIDED that the rate of deduction of tax (TDS) shall be 4% in case of contractors not registered under this Act

(2) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract involves both transfer of property in goods and labour and service,

or involves only labour and service and accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate and for such period as may be appropriate:

PROVIDED that nothing in the said certificate shall affect liability of the contractor to pay tax under this Act.

(3) Where any such certificate is granted, the person responsible for making payment under sub-section (1) shall, until such certificate is cancelled by the Commissioner, deduct tax at the rate specified in such certificate or deduct no tax, as the case may be.

(4) The amount deducted under this section shall be deposited into the appropriate Government treasury by the person making such deduction [2][before the expiry of fifteen days] following the month in which such deduction is made in the manner as may be prescribed.

(5) The person making such deduction under this section shall, at the time of payment or discharge, furnish to the contractor from whose bills or invoices such deduction is made, a certificate as may be prescribed in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.

(5 A) If any person referred to in sub-section (5) fails to furnish to the contractor the certificate of tax deduction at source within seven days of making payment or discharge, the person shall be liable to pay, by way of penalty, a sum of one hundred rupees per day from the day of making payment to the contractor or discharge until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

(6) Any deduction made in accordance with the provisions of this section and credited into the appropriate Government treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and he shall claim the adjustment towards the payment of output tax of the amount so

deducted in his return for the tax period in which certificate of such deduction was issued to him.

(7) A dealer claiming adjustment in his tax return of the amount deducted under this section shall preserve the certificate issued to him for a period of seven years and shall produce the same to the Commissioner on demand.

(8) If any person as is referred to in this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the appropriate Government treasury.

(9) Without prejudice to the provisions of sub-section (8), if any person fails to make deduction or, after deducting, fails to deposit the amount so deducted, he shall be liable to pay simple interest at the annual rate to be notified by the Government on the amount deductible under this section but not so deducted, and if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited into the appropriate Government treasury.

(10) Where the amount has not been deposited after deduction such amount together with interest and penalty referred to in sub-section (8) and sub-section (9) shall be a charge upon all the assets of the person concerned and recoverable as arrears of land revenue.

(11) Every person responsible for making deduction of tax under this section shall apply to the Commissioner for a Tax Deduction Account Number within the prescribed time and in the prescribed form and shall also furnish a return in the prescribed form within the prescribed period , and in the manner as may be notified by the Commissioner:

PROVIDED that, unless intimated otherwise by the Commissioner, every person having obtained Tax Deduction Account Number under the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) shall be deemed to have obtained a Tax Deduction Account Number under this Act and shall use the same Tax

Deduction Account Number under this Act.

(12) Any person who fails to comply with the requirement under sub-section (11) shall be liable to pay, by way of penalty, a sum of two hundred rupees per day from the day on which requirement arose until the failure is rectified:

PROVIDED that the amount of penalty payable under this sub-section shall not exceed twenty thousand rupees.

Explanation. - Nothing contained in this section shall apply to works contract executed in the course of inter-state trade or commerce or outside the state, or in the course of import into or export out of India.

9. The appellant's contention is that the work executed by the appellant does not fall within the definition of the term works contract as the building is not owned by it. To support its contention, appellant has placed on record the copies of the correspondence regarding transfer of assets and liabilities to the ministry, copies of Arbitration Order dated 9.12.2013 passed by Justice J.P. Singh (Retd.) in favour of OC in arbitration matter between OC and M/s Russell Interior Pvt. Ltd. , Letter of Jt. Director, Estate-II, New Delhi Municipal Council (NDMC) dated 06.09.2014 for transfer of OC's assets to Ministry of Home Affairs (MHA) 'free of cost' along with Cabinet Committee Note on transfer of OC's assets on "as is where is basis" to different agencies; Vacation Report dated 06:08.2014 of NDMC buildings (in respect of NDCC premises) along with relevant excerpts of Separate Audit Report of Comptroller and Auditor General of India, OC; CWG for the year ending 31st March, 2011 and copy of a letter dated 02.09.2006 issued by the OC to M/s HS Oberoi Buildtech Pvt. Ltd. Claiming to explain the scope of work and contending that it did not amount to works contract.

10. In support of his submission that the work got executed did not amount to 'Works Contract', appellant has placed reliance on the decision of Builders Association of India v. Union of India [1989] 2SCR 320, Kone Elevator India Pvt. Ltd v State of Tamil Nadu, (2014) 7 SCC 1. Rainbow Colour Lab v. State of Madhya Pradesh 2000 ELT 771 (SC) ; Commissioner of Sales Tax, U.P. v. Haji Abdul Majid.

11. It is noteworthy that except for the letter dated 02.09.2006 issued to the contractor M/s HS Oberoi Buildtech Pvt Ltd, no other document like the tenders invited, the agreement executed, copies of the running bills and the record maintained has been placed on record. These documents had

also not been provided to the VATO as well as the OHA. In the absence of complete set of documents/records the submissions made by the appellant do not carry any weight. Moreover, even the conditions stipulated in this letter dated 02.09.2006 belie the claim of the appellant that the work assigned to the contractor was not a works contract. Para 2 and 3 of this letter make it amply clear that the work got executed from the contractors was nothing else but the works contract:-

> "2. You have agreed to execute the work on the rates, terms and conditions of M/s Russell Interiors Pvt. Ltd.
>
> 3. Your tender for execution of interior works including HVAC, Electrical and Plumbing works has been accepted at a total cost of Rs.7,66,88,778.00 (Rupees Seven Crore Sixty Six Lacs Eighty Eight Thousand Seven Hundred and Seventy Eight only) for floor no. 5th and 6th (Fifth and Sixth Floor) of Commonwealth Games Delhi –2010 office as per the scope stipulated in tender working drawings and contract documents. This cost has been arrived at after over all rebate of seven percent and further three percent rebate on item No.5,7 i.e. 5.7.1 to 5.7.4: Sub Head 6 i.e. item no. 6.1 to 6.10; Sub Head 13 i.e. item no.13.1 to 13.9 and Sub Head 14 i.e. item no. 14.1 to 14.2.3 of interior works offered by you the above amount is tentative and you shall be paid for the work physically executed and measured at site. You have agreed to execute item no.9.4, 9.6 and 9.6.2 of interior works free of cost and the rate quoted against item no.D-1 (Section I-Incoming) of electrical works shall be treated as NIL. Site shall be handed over to you on "As, is where is" basis. The date of commencement shall be treated as 15th day of issue of this letter.'

12. Plea of the appellant is further negated by its own conduct as the appellant who had filed evidence in respect of four contractors having deposited the TDS and it was on production of this evidence that the Ld OHA dropped the proceedings in respect of four contractors and the rectification order was passed by the VATO. As the appellant failed to lead any evidence in respect of deposit of TDS in respect of these two contractors, the demands created were upheld.

13. We have carefully gone through the cases cited and are of the view that the submissions made by the appellant do not have any force. Admittedly the appellant had engaged the contractors and the works got executed for which the payment was made. No document or evidence has been placed on record in support of the submission that the goods passed on by the contractors were as a sale and not works contract.

14. Section 2(zo) of the DVAT Act clearly defines what amounts to works contract. A plain reading of the definition shows that any repairing or improvement in a building is works contract and the person responsible for making payment is required under the provisions of the Act to make deductions of tax at source at the prescribed percentage and remit the same to the government. It is not in dispute that the appellant is a society registered under the societies registration Act and falls within the definition of dealer in terms of clause 2(j)(iv) of the DVAT Act 2004. It is the appellant who has awarded the contract for improvement/repair of the building in which the office of the appellant was housed. The appellant has not shown any authority of law to lay down the proposition that it is the owner of the building only who can be responsible for the liability to pay tax on works contract or for making the deductions of the tax. On the contrary the provisions of section 36A of the DVAT Act unambiguously place the responsibility on the person making the payment to deduct TDS and in case of default makes him responsible for the payment of interest and penalty beside the amount of tax it ought to have deducted which it failed to deduct. There is no authority shown to the effect that when the construction in the instant case was undertaken and the payment was made by the appellant to the contractors, the goods did not pass on the execution of the works contract. The mere fact that the appellant who got the works executed and made the payment to the contractors who executed such work not being the owner of the property in question in no way allow any relief to him from the liability under the relevant provision of law. It is not disputed that it is the appellant who has awarded the contract and it is the appellant again who has made the payment to these contractors. In such facts and circumstances of the case the appellant has failed to show any provisions which discharges him from the liability to comply with the provisions of section 36A of the DVAT Act. Consequently the plea of the appellant on this account fails

15. Next ground for assailing the impugned orders is that initially the liability was fixed on account of six contractors which consequent upon the orders passed by the OHA remained in respect of two contractors.

16. As is apparent from the impugned orders passed by the VATO and the OHA the appellant produced the record regarding payment of TDS as per provisions of Act on which the relief has been granted to the appellant.

17. So far as the default assessment in respect of the remaining two contractors is concerned it is apparent that the appellant has not led any evidence to show that it had deducted the TDS or the contractors

had deposited it. On the other hand a reference has been made to the arbitration proceedings in which the arbitration award has been in favour of the appellant stating that the liability to pay VAT in terms of the agreement between the appellant and the contractors was of the contractors and not the OC. This in no way absolves the appellant from its statutory responsibility under section 36A of the DVAT Act. Here the issue is not whether the responsibility to pay VAT is of the appellant or the contractors but the liability of the appellant under the DVAT Act to make deductions of TDS while making payments to the contractors which it failed to discharge and accordingly the orders passed by the authorities below cannot be erred with.

18. Appellant has also assailed the impugned orders on the ground that since the contractors have paid applicable VAT on payments, OC should not be made liable for payment of VAT again. Reference has been made to the decisions of Jaipuria Infrastructure Developers vs. CST, Appeal Number 754 of 2008, wherein it was held that question who collected and deposited the service tax was immaterial as long as the same was collected and deposited with the Revenue Authorities. The Revenue cannot be allowed to receive service tax twice in respect of the same construction activities, once from the contractor and the second time from the person who collected the same."

19. It is apparent from the provisions of section 36A that the appellant being the contractee had the obligation to deduct the TDS in respect of payments made to the contractor executing works contract in respect of the appellant. The fact that the contractor had deposited the due tax himself does not absolve the appellant from its responsibility and liability under the Act. The Provisions of various sub-sections of section 36A are plain and unambiguous. Sub-section 6 provides that the tax deducted by the contractee has to be considered as the tax payment on behalf of the contractor, Sub-section 8 provides for imposition of penalty beside the deposition of TDS not deducted and Sub-section 9 provides for levying of interest. We agree that a conjoint reading of the various sub-sections would mean that in case of payment of tax by the Contractor, the contractee will get relief so far as the payment of amount of tax is concerned as the tax to be deducted at source is ultimately to be accounted for /adjusted into the payments made by the contractor. But this does not absolve the contractee from his liability to pay the penalty and make up the interest loss to the Government in terms of provisions of sub-sections 8 & 9 of Section 36A of the Act. Such principal of law is also discernible from the decision of M/s Hindustan Coca Cola Beverage Pvt. Ltd Versus Commissioner of Income Tax, 293 ITR 226.

20. In the said case of M/s Hindustan Coca Cola Beverage Pvt. Ltd Versus Commissioner of Income Tax, the appellant-assessee had entered into an agreement with M/s. Pradeep Oil Corporation for use of their premises for receipt, storage and dispatch of goods belonging to the appellant-company. The appellant had paid the warehousing charges to M/s. Pradeep Oil Corporation on which tax was deducted under Section 194C of the Income Tax Act, 1961 @ 2%. The Assessing Officer held the appellant to be 'assessee in default' for failure to deduct tax at source in respect of warehousing charges paid to M/s. Pradeep Oil Corporation. The Assessing Officer held that the warehousing charges were in the nature of rent as defined in Explanation to Section 194-1 of the Act and, therefore, tax ought to have been deducted at 20% under the said provisions as against deduction of tax at 2% under Section 194C of the Act. The Assessing Officer having held the appellant to be 'assessee in default' for the shortfall in the amount of tax deducted at source levied interest under Section 201 (1A) of the Act on the amount of tax alleged to be short deducted. The Assessing Officer accordingly determined the amount of short deduction of tax and also levied interest payable thereon under Section 201 (1A) of the Act. On these facts the Hon'ble Apex Court held:-

> 7. The Tribunal upon rehearing the appeal held that though the appellant-assessee was rightly held to be an 'assessee in default', there could be no recovery of the tax alleged to be in default once again from the appellant considering that Pradeep Oil Corporation had already paid taxes on the amount received from the appellant. It is required to note that the department conceded before the Tribunal that the recovery could not once again be made from the tax deductor where the payee included the income on which tax was alleged to have been short deducted in its taxable income and paid taxes thereon. There is no dispute whatsoever that Pradeep Oil Corporation had already paid the taxes due on its income received from the appellant and had received refund from the tax department. The Tribunal came to the right conclusion that the tax once again could not be recovered from the appellant (deductor-assessee) since the tax has already been paid by the recipient of income.
>
> 10. Be that as it may, the circular No. 275/201 /95-IT(B) dated 29.1.1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under Section 201 (1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been

paid by the deductee-assessee. However, this will not alter the liability to charge interest under Section 201 (1A) of the Act till the date of payment of taxes by the deductee-assessee or the liability for penalty under Section 271 C of the Income-tax Act."

11. In the instant case, the appellant had paid the interest under Section 201 (1A) of the Act and there is no dispute that the tax due had been paid by deductee-assessee (M/s Pradeep Oil Corporation). It is not disputed before us that the circular is applicable to the facts situation on hand."

21. From the aforesaid decision it is clear that the principle laid down in the above case is that in case of tax payment by the contractor, while the contractee again cannot be required to make payment of the amount of tax which he failed to deduct, his liability to pay penalty and interest on account of delay in payment of the tax amount to the extent of the TDS component still subsists.

22. As we have noticed in the pre-para, the appellant falls within the definition of the dealer and has engaged the contractors to get the works executed in connection with the holding of the games and has made payment to the contractors towards works executed by them. Appellant was required to make deduction of TDS as per section 36A of the DVAT Act which it failed to do. During hearing before the OHA as the appellant filed copies of documents evidencing the deposit of the TDS by only four of the six contractors, and failed to show any such evidence on record in respect of two contractors namely M/s Russel International Pvt Ltd and M/s HS Oberoi Buildtech P Ltd, the objections in respect of these two contractors were rejected and the assessment was upheld. In the rectification order passed it has been specifically noted that the appellant filed copies of returns, challans and other documents in respect of M/s RG Builders, M/s Das Innovations Pvt Ltd, M/s Ultimate International Pvt Ltd and M/s Sharma Constructions. Consequently vide rectification order passed the demands created in respect of these four contractors were dropped. Since no document or evidence in respect of M/s Russel International Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd has been filed by the appellant either before the authorities below or before us, we do not find any ground to interfere with the impugned orders and accordingly the impugned orders so far as these have upheld the demands created on account of non-deduction of TDS by the appellant in respect of two contractors M/s Russel International Pvt Ltd and M/s HS Oberoi Buildtech Pvt Ltd, are upheld

23. Consequently the appeals preferred by the appellant are dismissed and the impugned orders are upheld. Ordered accordingly.

24. Order pronounced in the open court.

25. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 234 – (Delhi)

BEFORE THE APPELEATE TRIBUNAL VALUE ADDED TAX, DELHI

[Diwan Chand: Member (A) And M. S.Wadhwa: Member (J)]

Appeal No.136-139/ATVAT/14-15
Assessment Period: 3rd & 4th Qtr 2010-11
Default Assessment of Tax, Interest & Penalty

M/s Quaint Commodities Pvt Limited
Shop No. GF-3/4/5,
Goverdhan Building,
53-54, Nehru Place,
New Delhi -110019 ... Appellant

Versus

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order 29.06.2017

ACCOUNT BOOKS – SYSTEM OF MAINTAINING ACCOUNTS – PURCHASE BILLS DATED SUBSEQUENT TO THE DATE OF SALES BILLS – NO OTHER DISCREPANCY FOUND – WHETHER SUFFICIENT GROUNDS TO REJECT THE BOOKS OF ACCOUNTS AND PROCEED FOR BEST JUDGMENT ASSESSMENT?

The appellant is engaged in the business of trading of Bullion and is registered dealer holding TIN # 07400385924. For Assessment Year 2011-12, the Appellant had been assessed under section 32 of Delhi Value Added Tax Act, 2004 in which additional tax liability was determined. The AA found that the appellant has made some sales prior to the date of purchase invoices and held such transaction as "unvouchered" (without vouchers or unaccounted)

Aggrieved with the default assessments made by the Learned Assessing Authority, appellant filed Objections before Objection hearing authority, who vide impugned orders dated 28.05.2014 rejected the objections and upheld the default assessment orders. Still aggrieved the appellant has filed the appeal before the Hon'ble Tribunal.

The appellant submitted that as per the general trading practice followed in Gold Markets includes that the order for purchase and sale being booked on a particular date at the prevailing rate to avoid gold rate fluctuations i.e. "Sauda Booked" and being delivered on a later date when the gold is received from supplier and transfer to customer or sold to the customer. In the given case, the Gold has been received and delivered through "Delivery Note" and invoice of sale and purchase of the gold has been received either before or after or at the time of delivery of Gold according to the convenience of the parties involved in transaction. Sometimes appellant has to meet the demand of some customers on urgent basis. So in that case appellant receives sale orders from its customer on the basis of which he generates the sale order. Then after generating the sale order appellant makes purchase from its suppliers. This is one of the systems of meeting the demand of special customers. Appellant submitted that delivery of the goods had been given only after the goods had been purchased from the dealer. That the appellant has no unvouchered sales or purchases during the period as mentioned above. All the sales and purchases are vouchered and proper taxes/ duties have been paid on the same.

Held:

"The provisions of section 42 of the DVAT Act and rule 48 of the DVAT Rules also refer to the Commissioner power to direct for maintenance of record and filing of returns in a particular way. While observing that the practice followed by the appellant was not in accordance with the provisions of law no specific provision has been pointed out nor any directions are shown to have been issued to the appellant for maintenance of record in a particular manner.

In such circumstances the holding of the transactions as unvouched when the appellant has produced the sales and purchase invoices and the record regarding purchase and transportation and delivery of the goods in his possession, the default assessment and the impugned orders rejecting the objections are unsustainable.

Accordingly the impugned orders are set aside and the matter is remanded back to the VATO to reframe the assessment after hearing the appellant for which the appellant shall appear before the Ld VATO on 18.07.2017"

Present for the Appellant : Sh. A.K. Aggarwal, Adv.,

Present for the Respondent : Sh. Pradeep Tara, Adv.,

ORDER

1. This order shall dispose of the above noted appeals filed by the appellant challenging the impugned orders dated 28.05.2014 rejecting the objections filed by the appellant and upholding the demands created by the VATO Ward-89 vide default assessments of tax and interest u/s 32 and default assessments of penalty u/s 33 r/w section 86(10) of the DVAT Act, 2004.

2. Facts of the case briefly stated are that M/s Quaint Commodities Private Limited, Appellant is engaged in the business of trading of Bullion and is registered dealer of Ward No.89 having registration number 07400385924. For Assessment Year 2011-12, the Appellant had been assessed under section 32 of Delhi Value Added Tax Act, 2004. In response to notice for assessment, the dealer had appeared through his counsel and all the relevant documents and information were provided as required by the Assessing Authority. Later on, the Assessing Authority passed an Order in which additional tax liability was determined and charged on the Sales and Purchases for the months of November 2010 and January 2011.

3. As per the default assessment orders following demands were created:-

Tax Period	Tax & Interest	Penalty
3rd	4,18,750	4,04,948
4th	47,54,408	42,66,097

4. Aggrieved with the default assessments made by the Learned Assessing Authority, appellant filed Objections before the Special Commissioner, hereinafter referred to as the Objection hearing authority (in short the OHA), who vide impugned orders dated 28.05.2014 rejected the objections and upheld the default assessment orders. Still aggrieved the appellant has filed the above noted appeals.

5. Appellant has assailed the impugned orders on the following grounds:-

1. That the impugned order passed by the Special Commissioner is wrong on facts.

2. That the Special Commissioner has failed to properly appreciate the evidence and the factual position and has fallen into error by

not finding the quality or fact of being greater in number, quantity, or importance of probability which was in favour of the appellant.

3. That the Special Commissioner in his order gives the reason that DVAT Act, 2004 & Rules made thereunder do not permit the sale of goods before purchasing it. Under DVAT Act, 2004 & Rules thereunder, it is first that the purchase of any goods is made and then the sales thereof conducted i.e. the purchase invoices always precede the sale invoice and not vice versa. But in case, when the goods are shown sold and we have accordingly issued the sale invoices before purchasing the same, there is hardly any use and purpose of maintaining the stock register by the appellant. Therefore, in view of all these, the OHA observed that he finds no merit and substance in the averments made and the objections filed of the appellant and rejected the same.

4. That a trade would be executed when Quant prices the bullion from the bank/CA and sells to its customer simultaneously. However, due to practical reasons the purchase and sale do not always happen simultaneously resulting in price/market risk for Quaint. In order to mitigate this risk, Quaint upon purchasing the bullion from the bank/CA, hedges itself on the domestic commodity exchange. The hedge is subsequently un-winded when Quant is able to sell the bullion to a customer.

5. As per market practice, Bullion can be bought or sold on priced/ unfixed basis. In Unfixed Purchase/Sale, the consideration would be approximately between 105% - 110% of the Current Market price. Such Bullion needs to be priced within 11 calendar days of lifting the same. Any extra margin is returned back to the beneficiary counterparty, on the date of pricing such bullion. If the Bullion is sold on Unfixed basis, the Invoice is raised either on the date of lifting (at a provisional rate) or on the date of pricing which will be always on a later date. If a provisional Invoice is raised, then a differential Debit/Credit Note is raised on the date of pricing to book the actual value of Bullion.

6. However, Quant ensures that all such Invoicing & VAT liability is booked & filed in the very same month of such purchase/sale, which in turn reconciles the Closing Stock at the end of each month. Appellant has enclosed the Stock Statement and VAT Returns for the Period November 2010 to March 2011

7. That there were sufficient evidences and the explanations that could be led by the appellant to assist the Assessing Authority in making the Order of Assessment and to prove its case before the Special Commissioner before they could go on to pass their Orders since sufficient opportunity was not provided.

8. That it is humbly submitted that the appellant had already paid the tax/duty amount to the dealers from whom the goods were purchased at the time of purchase of goods and also submitted all the relevant detail to department from time to time as and when required.

9. That the contention of Special Commissioner that the appellant has been doing unvouchered sales and purchases of 15 kg Gold as per the order for the month of November 2010, our purchases wide invoice no. GKGDELl0- 11/521 dated 24.11.2010 amounting to Rs. 3,02,24,166 has been assessed as unvouchered sales and additional tax liability @ 1 % plus interest has been demanded.

10. That during third quarter of the financial year 2010-11 appellant sold and purchased gold in different quantities. In the month of November 2010, appellant booked the sale of 2 kg and 13 kg gold (total 15 kg) to M/s S K Impex vide invoice no. DEL/003 and DEL/004 amounting to Rs.40,39,207/- and 2,65,32,678/- respectively on 23.11.2010 but delivery of the same was made on 24.11.2010 when the gold was purchased. The transaction of sale is not made on 23.11.2010, only the invoice was booked which is required as per the standard market practice. The sale transaction was complete on 24.11.2010 when the delivery was made. Such sale was against 15 kg gold purchased on 24.11.2010 amounting to Rs. 3,02,24,166/- (Purchase Invoice attached as 'Annexure 3') which clearly establishes the fact that neither the sales nor the purchases are unvouchered. We are hereby attaching the delivery note dated 24.11.2010 as 'Annexure 4'. Further we are also attaching the copy of ledger account of M/s S K Impex as 'Annexure 5' representing the sale on 24.11.2010."

11. That in the year 2010-11, Quant had a tie up with M/s Lemuir Secure Logistics Pvt. Ltd. (Lemuir) for storage & delivery of Bullion to its customers. Lemuir were the authorized agency

of Quaint to receive the Bullion from the bank /CA's Security Agent Such Bullion was stored with Lemuir till Quant issues a Delivery Order to deliver such Bullion to its customers, with complete commodity specifications & the customer's address of delivery.

12. That Lemuir then delivered such Bullion to the authorized representative of Quant's customer & gets an acknowledgement from the customer, a copy of which is forwarded to Quaint Lemuir also sends a Daily Stock Report to Quaint mentioning the complete details of Bullion movement for any given particular day.

13. Further, in the month of January 2011, our vouchered Sales of 120 kilograms of Gold has been said to be done through unvouchered purchases and has been taxed, Similarly, our Sales of 180 kilograms have been declared as unvouchered sales which are incorrect since the Assessing Officer didn't identify the factual position of the case and passed an order on the basis of incomplete facts, documents, information and evidences.

14. That during the fourth quarter of the financial year 2010-11, in the month of January 2011 the appellant received the consignment from State Trading Corporation which was supplied to Lemuir Secure Logistics, who in turn delivered it to various sellers. The sales of 351 kg along with sales of 50 kg and 20 kg, thereby totaling 421 kg during the month of January 2011 have been made out of total purchases of 421 kg made during that particular month. Thus the dealer has sold gold out of vouchered purchases and not out of unvouchered purchases. Appellant's further submission is that the sale of 20 kg made on 31.01.2011 is out of the purchases of 200 kg booked on 31.01.2011. The purchases of 200 kg have been booked on 31.01.2011 but have been made at a prior date. Confirmation of such purchases has been given by STC which is attached as 'Annexure 5'. Such purchase of 200 kg is used to sell gold of 200 kg at different dates. Appellant has attached the confirmation from STC for these.

15. Further submission made is that as per the general trading practice followed in Gold Markets includes that the order for purchase and sale being booked on a particular date at the prevailing rate to avoid

gold rate fluctuations i.e. “Sauda Booked” and being delivered on a later date when the gold is received from supplier and transfer to customer or sold to the customer. In the given case, the Gold has been received and delivered through “Delivery Note” and invoice of sale and purchase of the gold has been received either before or after or at the time of delivery of Gold according to the convenience of the parties involved in transaction.”

16. That in case of appellant i.e. M/s Quaint Commodities, they place order to various suppliers, one of them being the State Trading Corporation of India Ltd. (hereinafter referred to as STC) in response to order of’ applicant purchase the gold and then transfers the Gold Kilo Bars part or full to its Transporter “Brink Arya India Pvt. Ltd” according to the request placed by the appellant who in turns transfers it to “Lemuir Secure Logistics Pvt Ltd” (hereinafter referred to as Lemuir) which on behalf of appellant delivers the goods to various customers.

17. That sometimes appellant has to meet the demand of some customers on urgent basis. So in that case appellant receives sale orders from its customer on the basis of which he generates the sale order. Then after generating the sale order appellant makes purchase from its suppliers. This is one of the systems of meeting the demand of special customers.

It is neither specified in DVAT Act, 2004 & Rules made thereunder that sale can be affected only after purchasing the goods. As per Accounting Standard-I, some transactions should be analysed and recorded on the basis of their actual happening and Economic reality and not on the basis of their Legal form.

Appellant’s submission is that delivery of the goods has been given to only after the goods has been purchased from the dealer.

18. It is also submitted that the dealer is one of the regular tax payers of Delhi and has never made any default in payment of taxes. Therefore it is requested to grant the said relief which is allowable to the dealer.

19. Appellant has submitted a copy of Trading Account and Audited Balance Sheet for the financial year 2010-11 and summary of sales and purchase for the financial year 2010-11.

21. That the appellant has no unvouchered sales or purchases during the period as mentioned above. All the sales and purchases are vouchered and proper taxes/duties have been paid on the same.

22. That the appellant reserves his rights to raise additional grounds of objection at a time of hearing of objection.

6. We have heard Sh AK Aggarwal, Adv., Ld Counsel for the Appellant and Sh. Pradeep Tara, Adv. Ld Counsel for the Revenue and gone through the record of the case.

7. Ld Counsel for the Revenue defending the orders passed by the authorities below submitted that the contentions of the appellant were not acceptable. The authorities below were justified in making the assessments as the appellant has been making sales and issuing the sales invoices even prior to the making of purchases and said transactions could not be held to be in any way covered by the provisions of the DVAT Act and the appellant has been rightly taxed.

8. After hearing both the counsels we have carefully gone through the record of the case.

9. Appellant has placed on record the copies of few invoices and explained the process adopted in conducting the transactions. At page 11 of the paper book, there is a tax and VAT invoice from Axis Bank bearing delivery reference No. GKGDEL 10-11/521 dated 24.11.2010 wherein the name of purchaser is Quant Commodities Pvt. Ltd. in respect of Gold KG Bar 995 of 15 Kg for total amount of Rs.3,05,26,408/-. On page 12. It is a delivery note dated 24.11.2010 from Quant Commodities Pvt Ltd to Lemiur Secure Logistics Ltd in respect of 15 KG Gold Bar wherein the name of purchaser is S.K. Impex, 1241, Gali Kacha Bagh, Chandni Chowk, Delhi. At page 13, it is a tax invoice issued by Quant Commodities Pvt. Ltd dated 23rd Nov., 2010 addressed to S.K. Impex in respect of 2.00 Kg Gold Kilo Bar indicating total amount of Rs.40,79,600/-. At page 14, is the another tax invoice from Quant Commodities Pvt. Ltd to S.K. Impex in respect of 13 Kg. Gold Kilo Bar valued at Rs.2,67,98,005/-. While two tax invoices issued by Quant Commodities Pvt. Ltd to S.K. Impex are dated 23rd Nov., 2010 VAT invoice issued by the Axis Bank to Quant Commodities Pvt. Ltd and the delivery order issued by the Quant Commodities Pvt. Ltd to Lemuir Secure Logistics Pvt. Ltd. are dated 24th Nov., 2010. On these facts show the authorities below have treated these purchases as unvouched on the ground that tax invoices issued in respect of sale are of a date prior to the

date of purchase. Appellant has also placed on record, a certificate dated 29.08.2013 State Trading Corporation of India Limited wherein they have certified that they had imported Gold Kilo Bars through supplier, Binsabt Jewellery LLC, Dubai on behalf of M/s Quant Commodities Pvt. Ltd vide indent dated 07.01.2011 for 100 Kg. and 28.01.2011 again for 100 KG. Lending dates for these were 11.01.2011 and 24.01.2011 respectively. It is further certified that these were delivered to M/s Quant Commodities Pvt. Ltd as under:-

Delivery Date	Qty. (In Kgs)	Funds received (INR)	Bank Name	Bank A/c No.	Receipt date
-	-	3,090,000	IndusInd Bank	0005125242050	07.01.2011
20.01.2011	25	101,367,247	IndusInd Bank	0005125242050	18.01.2011
-	-	3,090,000	IndusInd Bank	0005125242050	20.01.2011
21.01.2011	15	100,600,000	IndusInd Bank	0005125242050	21.01.2011
22.01.2011	45	-	-	-	-
24.01.2011	15	-	-	-	-
28.01.2011	30	155,400,000	IndusInd Bank	0005125242050	28.01.2011
29.01.2011	50	-	-	-	-
31.01.2011	20	19,477,000	IndusInd Bank	0005125242050	31.01.2011
		19,870,000	IndusInd Bank	0005125242050	31-Jan-11
	200	402,894,247			

10. Appellant has placed on record the invoices and delivery notes in respect of sale conducted of the Gold imported through STC and it is evident that the tax invoices have been issued by the appellant to the purchasers on the same date on which the delivery has been given by the STC to the appellant. He has also placed on record the copy of ledger account of SK Impex in his ledger, service agreement between Lemiur Secure Logistics Pvt Ltd, copy of stock register and annual accounts of the Company and the copies of invoices issued by the STC.

11. It is apparent from the facts of the case that the purchase and sales made by the appellant have been recorded by the appellant in his books of accounts and requited returns filed in accordance with law. Appellant has explained the facts and the circumstances and the manner in which referring to the trade practice he has booked the orders, issued invoices and made purchases and effected delivery against the booked orders and sales invoices issued by him. Simply on the ground that the dates of issuance of sale invoices preceded the dates of purchase invoices the transactions have been held to be unvouched and taxed on which the

appellant claims to have already paid the tax, There is no discussion or adjudication on the issues raised by the appellant by examining the books of accounts maintained and the so-called trade practice followed. Further the provisions of section 42 of the DVAT Act and rule 48 of the DVAT Rules also refer to the Commissioner power to direct for maintenance of record and filing of returns in a particular way. While observing that the practice followed by the appellant was not in accordance with the provisions of law no specific provision has been pointed out nor any directions are shown to have been issued to the appellant for maintenance of record in a particular manner.

12. In such circumstances the holding of the transactions as unvouched when the appellant has produced the sales and purchase invoices and the record regarding purchase and transportation and delivery of the goods in his possession, the default assessment and the impugned orders rejecting the objections are unsustainable.

13. Accordingly the impugned orders are set aside and the matter is remanded back to the VATO to reframe the assessment after hearing the appellant for which the appellant shall appear before the Ld VATO on 18.07.2017.

14. Order announced in the open court.

15. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 55 DSTC 245 (Delhi)

BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
[M. S. WADHWA: MEMBER (J)]

Appeal No. 264-266/ATVAT/18-19

Simmtronics Infotech Pvt. Ltd. ... Appellant
D-118, Okhla Industrial Area, Phase-I,
Delhi-110020

Vs.

Commissioner of Trade & Taxes, Delhi ... Respondent

Date of Order: 24.07.2019

SEARCH AND SURVEY – SECTION 60 OF DELHI VALUE ADDED TAX ACT, 2004 – COLLECTION OF TAX PRIOR TO FRAMING ASSESSMENT – JURISDICTION TO FRAME ASSESSMENT ORDER – NOTICE SERVED FORM DVAT-41 U/S 74(8) TO OBJECTION HEARING AUTHORITY – PENALTY ORDERS WITHOUT SERVICE OF NOTICE.

ENFORCEMENT TEAM CONDUCTED SURVEY AND VARIATION FOUND IN CASH AND STOCK – COMPELLED TO PAY RS. 7,00,000/- TOWARDS TAX AND PENALTY – ENFORCEMENT TEAM HAD NO JURISDICTION TO FRAME ASSESSMENT AND IMPOSE PENALTY IN ABSENCE OF DVAT-50 – OBJECTION HEARING AUTHORITY DID NOT PASS THE ORDER WITHIN 15 DAYS FROM RECEIPT OF NOTICE IN FORM DVAT-41 U/S 74 (8) – NO OPPORTUNITY WAS GIVEN PRIOR TO PASSING THE PENALTY ORDERS U/S 86 (10) & 86 (14) – IMPUGNED ORDERS SET ASIDE AND APPEALS ALLOWED.

Facts

The appellant company was registered with the Department of trade & Taxes in Ward-89 vide TIN No. 07530304712 and was dealing in the sale of Computer parts and accessories taxable @ 5%.

That the officials of the Enforcement branch of the Department of Trade & Taxes visited the business premises of the appellant company on 14.05.2013, when the enforcement officials conducting survey at the business premises were alleged to have noticed certain variation in cash in hand as well as with the stock in hand on the date of visit which did not tally with the stock inventory prepared by the visiting officials and the cash in hand available with the appellant company.

That the visiting officials of the enforcement branch who surveyed the business premises of the appellant company on 14.05.2013 compelled

the appellant company to immediately deposit a sum of Rs. 7,00,000/- towards the amount of tax & penalty likely to be created against the appellant company on account of alleged variations noticed by the visiting enforcement officials, failing which further coercive action would be taken against the appellant company. Under the pressure exerted by the visiting enforcement officials, the appellant company deposited a sum of Rs. 5,00,000/- and Rs. 2,00,000/- totaling Rs. 7,00,000/- (Rs. 3,50,000/- against the demand likely to be created for assessment of tax and 3,50,000/- on account of penalty under section 86(10) of the DVAT Act.

That vide notice of default assessment of tax & interest dated 19.02.2014, an additional demand of Rs. 3,50,011/- and vide notice of assessment of penalty dated 20.02.2014 u/s 86(10), a penalty of Rs. 3,50,010/- had been imposed. Further, vide notice of penalty dated 19.02.2014, a penalty of Rs. 50,000/- had been imposed u/s 86(14) of the DVAT Act for non -appearance of the appellant pursuant to the alleged notice dated 15.01.2014 by the respondent. Nowhere, in the order it was stated that the notice dated 15.01.2014, directing the dealer to appear on 22.01.2014 was, if at all served on the appellant, on which date it was served and how it was served? It was also not clear from the order as to how the dealer could be coerced to pay any amount of tax & penalty which was yet to be assessed and how could one arrive at the exact amount of tax & penalty likely to be created, when no assessment was framed till the time of payment of the alleged amount of Rs. 7,00,000/-.

That the impugned default assessment of tax, interest and penalty had been framed by the AVATO Enforcement branch who had no jurisdiction to frame the assessment or impose penalty under the provisions of DVAT Act. Only the VATO/ AVATO of the concerned ward having territorial jurisdiction, could only frame the notices under section 32 and also impose penalty under section 86 (10). The visiting officials of the Enforcement branch were only empowered to survey the premises with a lawful authority of the Commissioner of VAT under section 60 of DVAT Act and could submit a report of survey to the concerned ward VATO, who could only frame the notice of default assessment after considering the report submitted by the Enforcement officials and after affording reasonable opportunity of being heard to the appellant company and after verifying the same with the books of account.

That the appellant company, filed three objections before the OHA against the notice of default assessment of tax, interest & penalties u/s 86 (10) and 86 (14) and the OHA vide his order dated 22.02.2018, set

aside the impugned orders of tax, Interest & penalties which were framed ex-parte and remanded the matter back to assessing authority after giving opportunity of being heard.

That apart from challenging the ex-parte notice of default assessment of tax, interest and penalty, appellant company also challenged the powers of the visiting enforcement officials to frame the assessment as well their powers to direct the appellant company to deposit the amount of tax as well as penalty under threat of further penal action in the event of non-payment of amount. Further, the appellant company also challenged that the officials of the survey team only had authority to conduct a survey but the officers comprising in the team were not even competent to be part of enforcement team. The visiting officials did not also carry with them, their authority in form DVAT-50 which was a mandatory requirement. But these legal issues were not decided by the OHA, inspite of various judgments of Hon'ble Delhi High Court submitted to the OHA during the course of hearing, were not considered by the OHA who was pre-determined to remand the matter back to the assessing authority for rectifying the orders of illegalities committed earlier which could not be permitted in the eyes of law. Hence, in view of this the appellant company moved an application for review on 28/2/2018 u/s 74B of the DVAT Act which had also been dismissed vide order dated 21.05.2018.

That the appellant company also filed application in form DVAT-41 on 6/2/2018 u/s 74(8) of the DVAT Act as the period to dispose off the objections within a period of 3 months of making the objections expired as provided under section 74(7) of the DVAT Act. Accordingly, the objections in this case were to be decided by 21.02.2018 i.e, within 15 days from the date of filing of DVAT-41 which was on 06.02.2018. As per conjoint reading of sections 74(7), 74(8) & 74(9), if the objections were not disposed off within 15 days of the notice the objections then the Commissioner shall be deemed to have allowed the objections. In this case, the notice by the appellant company was given on 06.02.2018 and the OHA could have decided the objections by 21.02.2018 but decision was made on 22.02.2018 i.e. on expiry of notice, the objections were deemed to have been allowed by the Commissioner as provided under section 74(9) and the OHA ceases to have any jurisdiction over the matter which already deemed to have been allowed by the afflux of time which expired on 21.02.2018.

Held

Appellant had also assailed the impugned assessment orders on the ground that visiting officials of the Enforcement team did not carry with

them authority in form-DVAT-50, which was a mandatory requirement. No evidence to prove this fact had been filed on behalf of the revenue side. Hon'ble Delhi High Court in the case of Capri Bathaid, held that visiting Enforcement officials were required to have authority in DVAT-50 to be issued by the Commissioner or any other competent authority on behalf of him. Hence, on this ground also impugned assessment orders of tax, interest and penalty were liable to be set-aside.

Appellant had also assailed the imposition of penalty on the ground that no notices were issued before framing the assessment order of penalty. Hon'ble Delhi High Court in the judgment of Bansal Dye Chem (P) Ltd. Vs. Commissioner of Value Added Tax, Delhi & Ors. (DSTC 2014) 52 HC J-396, made following observations which were relevant to decide whether in this facts and circumstances, penalty was rightly imposed-

> *"The very nature of the proceedings under section 33 of the DVAT Act read with Rule 36 (2) of the DVAT Rules underscore the need for the VATO to observe the principles of natural justice while making the penalty order. This entails serving on the Assessee a separate notice to show cause why penalty should not be imposed and affording the Assessee an opportunity of being heard prior to passing the penalty order. The imposition of penalty is not a mechanical or automatic exercise but requires application of mind by the assessing authority to the facts and circumstances of the case. The fact that an Assessee is found liable to pay enhanced taxes and interest does not ipso facto determine whether the Assessee is also liable to pay a penalty".*

It was clear from the facts of this case that penalty orders were also passed ex-parte u/s 86 (10) of the DVAT Act. No record or evidence had been produced by the revenue side to prove that prior notices and opportunity of hearing was given to the appellant before imposing penalty. Secondly, penalty was also imposed u/s 86 (14) of the DVAT Act. It was alleged that appellant was issued notices dated 15/1/2014 to appear on 22/1/2014 but in this regard also, no record had been produced by the revenue side as to when and if at all notices were served on the appellant. In light of the facts, the ratio in the case of Bansal Dye Chem squarely applied to the facts of these appeals and on this ground, penalty orders u/s 86 (10) and 86 (14) were liable to be set-aside.

Orders dated 22/2/2018 were passed after expiry of 15 days of issue of notices in Form DVAT-41 u/s 74 (8) of the DVAT Act to the OHA, hence objections will be deemed to have been allowed and OHA had no power

or jurisdiction to pass the orders on 22/2/2018. In this regard, section 74 (7), 74 (8) & 74 (9) of DVAT Act were relevant. Under section 74 (7) DVAT Act, the OHA was required to dispose of objections within a period of three months and u/s 74 (8), where the OHA had not notified the person of a decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within 15 days. And according to section 74 (9), if the decision had not been made by the end of the period of 15 days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the OHA shall be deemed to have allowed the objections. It was clear from the facts of the appeals that on expiry of period of three months from date of filing of objections, appellant moved an application in DVAT-41 on 6/2/2018 u/s 74 (8) of the DVAT Act but despite this application, OHA decided the objections on 22/2/2018, while period of 15 days expired on 21/2/2018, within which period, OHA was supposed to dispose of objections, hence due to this reason also objections will be deemed to have been allowed as per section 74 (9) of the DVAT Act. On this ground also appeal was liable to be allowed.

Present for Appellant : Sh. V. Lalwani, Advocate

Present for the Respondent : Sh. C. M. Sharma, Advocate

ORDER

1. The instant appeals have been filed against the impugned orders dated 22/2/2018 and review order dated 21/5/2018 passed by ld. Additional Commissioner, hereinafter called Objection Hearing Authority, (in short OHA) who vide these orders, remanded back the record to the jurisdictional VATO to reframe assessment of tax, interest and penalty as original orders were ex-parte. As common question of law and facts are involved in all these appeals, hence they are being disposed of by following common orders.

2. The brief facts of the present appeals are that the appellant company is registered with the Department of trade & Taxes in Ward-89 vide TIN No. 07530304712 and is dealing in the sale of Computer parts and accessories taxable @ 5%.

3. That the officials of the Enforcement branch of the Department of Trade & Taxes visited the business premises of the appellant company on 14.05.2013, when the enforcement officials conducting survey at the business premises are alleged to have noticed certain variation in cash

in hand as well as with the stock in hand on the date of visit which did not tally with the stock inventory prepared by the visiting officials and the cash in hand available with the appellant company.

4. That the visiting officials of the enforcement branch who surveyed the business premises of the appellant company on 14.05.2013 compelled the appellant company to immediately deposit a sum of Rs. 7,00,000/- towards the amount of tax & penalty likely to be created against the appellant company on account of alleged variations noticed by the visiting enforcement officials, failing which further coercive action would be taken against the appellant company. Under the pressure exerted by the visiting enforcement officials, the appellant company deposited a sum of Rs. 5,00,000/- and Rs. 2,00,000/- totaling Rs. 7,00,000/- (Rs. 3,50,000/- against the demand likely to be created for assessment of tax and 3,50,000/- on account of penalty under section 86(10) of the DVAT Act.

5. That vide notice of default assessment of tax & interest dated 19.02.2014, an additional demand of Rs. 3,50,011/- and vide notice of assessment of penalty dated 20.02.2014 u/s 86(10), a penalty of Rs. 3,50,010/- has been imposed. Further, vide notice of penalty dated 19.02.2014, a penalty of Rs. 50,000/- has been imposed u/s 86(14) of the DVAT Act for non appearance of the appellant pursuant to the alleged notice dated 15.01.2014 by the respondent. Nowhere, in the order it is stated that the notice dated 15.01.2014, directing the dealer to appear on 22.01.2014 was, if at all served on the appellant, on which date it was served and how it was served? It is also not clear from the order as to how the dealer could be coerced to pay any amount of tax & penalty which was yet to be assessed and how could one arrive at the exact amount of tax & penalty likely to be created, when no assessment was framed till the time of payment of the alleged amount of Rs. 7,00,000/-.

6. That the impugned default assessment of tax, interest and penalty have been framed by the AVATO Enforcement branch who has no jurisdiction to frame the assessment or impose penalty under the provisions of DVAT Act. Only the VATO/ AVATO of the concerned ward having territorial jurisdiction, can only frame the notices under section 32 and also impose penalty under section 86(10). The visiting officials of the Enforcement branch were only empowered to survey the premises with a lawful authority of the Commissioner of VAT under section 60 of DVAT Act and could submit a report of survey to the concerned ward VATO, who could only frame the notice of default assessment after considering the report submitted by the Enforcement officials and after affording reasonable opportunity of being heard to the appellant company and after verifying the same with the books of account.

7. That the appellant company, filed three the objections before the ld. OHA against the notice of default assessment of tax, interest & penalties U/s 86(10) and 86(14) and the ld. OHA vide his order dated 22.02.2018, set aside the impugned orders of tax, Interest & penalties which were framed ex-parte and remanded the matter back to assessing authority after giving opportunity of being heard.

8. That apart from challenging the ex-parte notice of default assessment of tax, interest and penalty, appellant company also challenged the powers of the visiting enforcement officials to frame the assessment as well their powers to direct the appellant company to deposit the amount of tax as well as penalty under threat of further penal action in the event of non- payment of amount. Further, the appellant company also challenged that the officials of the survey team only had authority to conduct a survey but the officers comprising in the team were not even competent to be part of enforcement team. The visiting officials did not also carry with them, their authority in form DVAT-50 which is a mandatory requirement. But these legal issues were not decided by the ld. OHA, inspite of various judgments of Hon'ble Delhi High Court submitted to the ld. OHA during the course of hearing, were not considered by the ld. OHA who was pre-determined to remand the matter back to the assessing authority for rectifying the orders of illegalities committed earlier which cannot be permitted in the eyes of law. Hence, in view of this the appellant company moved an application for review on 28/2/2018 u/s 74B of the DVAT Act which has also been dismissed vide order dated 21.05.2018.

9. That the appellant company also filed application in form DVAT-41 on 6/2/2018 u/s 74(8) of the DVAT Act as the period to dispose off the objections within a period of 3 months of making the objections expired as provided under section 74(7) of the DVAT Act. Accordingly, the objections in the present case were to be decided by 21.02.2018 i.e, within 15 days from the date of filing of DVAT-41 which was on 06.02.2018. As per conjoint reading of sections 74(7), 74(8) & 74(9), if the objections are not disposed off within 15 days of the notice the objections then the Commissioner shall be deemed to have allowed the objections. In the present case, the notice by the appellant company was given on 06.02.2018 and the OHA could have decided the objections by 21.02.2018 but decision was made on 22.02.2018 i.e. on expiry of notice, the objections are deemed to have been allowed by the Commissioner as provided under section 74(9) and the OHA ceases to have any jurisdiction over the matter which already deemed to have been allowed by the afflux of time which expired on 21.02.2018. Hence, in view of the above facts, the present appeals before this Hon'ble Tribunal on the following grounds-

i) That the impugned notice of tax, interest as well as penalties under section 86(10) and 86(14) are illegal and void as the impugned orders were pre determined orders as the appellant company under the threat of further punitive action was compelled to pay the amount according to the whims and fancies of the visiting enforcement officials, which is clear from the fact that the exactly the same demands were created vide impugned notices of default assessment of tax & interest as well as penalties under section 86(10) which had already been deposited by the appellant company on 30.05.2013 much before the impugned orders were framed in February 2014. The ld. OHA has simply upheld the order in pre determined and mechanical manner without considering the written submissions by the appellant company during the course of hearing and without considering the relevant judgments cited by the appellant company.

ii) That the impugned notice of penalty u/s 86(14) is also illegal and void as no notice dated 15.01.2014 alleged to have been sent to the appellant company for 22.01.2014, was ever served on the appellant company. In the absence of service of any notice, the penalty imposed is illegal and void. The ld. OHA has simply upheld the order in pre determined and mechanical manner without considering the written submission by the appellant company during the course of hearing and without considering the relevant judgment cited by the appellant company.

iii) That the impugned orders of penalties u/s 86(10) and 86(14) of the DVAT Act are illegal and void. It is well settled law by various Judicial pronouncements by the Hon'ble Delhi High Court in the case of Bansal Dye Chern Vs. Commissioner of VAT and various other judgments wherein it is clearly laid down that the penalty proceedings are distinct from the assessment proceedings and penalty cannot be imposed without affording opportunity to the dealer. The ld. OHA has simply upheld the order in pre determined and mechanical manner without considering the written submission by the appellant company during the course of hearing and without considering the relevant judgment cited by the appellant company.

iv) That the impugned notice of tax, interest as well as penalties under section 86(10) and 86(14) are illegal and void. That under section 60 of DVAT Act, the ld. Commissioner through its officer can enter and search any business premises on the reasonable belief that the dealer is attempting to avoid and evade tax or

is concealing his tax liability. For this, the ld. Commissioner through his officers performs the various functions under section 60 of DVAT Act. Section 60, nowhere empowers the visiting enforcement officials to frame the notices of default assessment of tax & interest as well as penalties u/s 32 & 33 of DVAT Act. Hon'ble Delhi High Court in the case of M/s Capri Bathaid Pvt. Ltd Vs. Commissioner of Trade & Taxes, 52 DSTC page 617, clearly held that first of all for exercising power under section 60 of DVAT Act, the Visiting officials must carry with them, the authorization in form DVAT-50 as per the provisions of DVAT Act. Further, held that the enforcement officials can conduct the survey as well as other various acts provided under section 60 of DVAT Act but have no power to frame the notices of default assessment of tax & interest and penalties u/s 32 & 33 of DVAT Act which can only be exercised by the assessing officer of the concerned ward having territorial jurisdiction wherein whose area the dealer is functioning. Not only this, it was also held that collecting the demands of tax & penalties even before framing of notice of tax, interest as well as penalties under the threat of penal action, is illegal and void. The ld. OHA merely on the grounds of certain discrepancy alleged to have been noted by the visiting officials without substantiating the same has in a mechanical manner remanded the matter back to the AO. In fact, this amounts to giving an opportunity to the AO to rectify the mistake while framing the impugned orders of tax and penalties. The impugned orders were framed by the enforcement officials of the Department of Trade & Taxes who had no powers to frame the assessment but now the orders would be framed after remand by the AO of the concerned ward, having territorial jurisdiction which is illegal and void. The Hon'ble Madhya Pradesh High Court in the case of Auto Pins (India) (Regd.) & Anr. Vs Sales Tax Officer & Anr. decided on 10.01.1985 held that on the facts that the jurisdiction of the revising authority u/s 39(2) of the Act, was confined to the legality and propriety of the order passed in the appellate and/or the assessing authority, if he considered it to be erroneous in so far as it was prejudicial to the revenue it was not the forum to overcome the limitation. A remand could not be directed to fill up the lacunae. It was not merely to provide fresh opportunity to rectify the mistake committed in the original order by the AO.

v) That the impugned notice of tax, interest as well as penalties under section 86(10) and 86(14) are illegal and void. Under

section 74 of the DVAT Act, the ld. OHA has no power to remand the matter back to the AO to decide the matter afresh merely on the basis of one ground of alleged variation alleged to have been noticed in cash in hand and stock noticed by the visiting officials of the enforcement and alleged admission by the ld. OHA of non service of notice alleged to have been issued by the AO (Enforcement). Whereas, in the objections the appellant company raised various questions of law challenging the power of the visiting enforcement officials to conduct the survey at the premises of the appellant company as the visiting enforcement officials were not duly authorised to conduct the survey operation as provided under the provisions of DVAT Act. As well as the composition of the visiting enforcement officials was not as per the provisions of the DVAT Act. Also the enforcement officials were not the jurisdictional officials/AO of the appellant company, had no power or authority to frame the notices of default assessment of tax & interest as well as penalties. These issues raised by the appellant company were legal and go to the root of the case, hence could not have been ignored by the ld. OHA who simply remanded the case illegally in mechanical manner. The ld. OHA also ignored the judgment of this Hon'ble Tribunal in the case of M/s Shree Cement Limited Vs Commissioner of Trade & Taxes in appeal nos. 732 & 733/ATVAT/0809 decided on 30.09.2010 held that "the ld. OHA was obliged to decide the objection in as much as either he could accept or reject but could not remand the case for fresh adjudication. Hence the order of ld. OHA is held to be erroneous to this extent".

vi) That the order of ld. OHA dismissing the review application by the appellant company for the reasons that "there is no new ground to interfere to the order dated 22.02.2018 passed by the undersigned." The ld. OHA did not even considered the appellant company in its review application that the order was passed by the ld. OHA was beyond the period of notice by the appellant company as provided under section 74(8) of the DVAT Act. As per section 74(9) after the expiry the period of notice the objections stands allowed by the Commissioner. Therefore, the ld. OHA ceases to have any power to decide and pass the impugned orders on the 16th day of issue of notice by the appellant/ objector company. Further, the ld. OHA has failed to appreciate the well settled law that in review application no fresh material can be considered and it is only if any question of law raised by the objector/appellant

company is not considered and if considered would result in change of final order passed by the ld. OHA and such other issues of Law not decided can be considered in review but no new fact can be considered in review applications. This shows the total non application of mind by the ld. OHA in deciding the review application and has illegally dismissed the same without application of mind in most casual and mechanical manner.

vii) That the impugned notice of tax, interest as well as penalties under section 86(10) and 86(14) are illegal and void. The alleged discrepancies in cash in hand as well as in stock in trade were only fabricated by the visiting enforcement officials. Without admitting any alleged discrepancies, it is submitted that even if there is alleged variation in cash in hand, there is no provision under the DVAT Act which empowers the Commissioner to levy VAT on cash in hand. The VAT can be levied as per the charging sections on the transaction of sale. Variation in cash in hand is not a transaction of sale which can be subjected to tax under the provision of VAT. As regards the alleged discrepancies in stock in trade unless and until there is clear finding to the fact that the variation in stock in trade is the result of transaction of sale by the appellant/ objector company out of the books of accounts, merely on the grounds of alleged variation in stock in trade which may be due to wrong application of price/wrong valuation of stock or similar other reasons without attributing alleged transaction by the appellant/objector company out of the books of accounts cannot be subjected to VAT. There is no such finding in the present case hence the impugned orders of tax & interest as well as penalty is void. The ld. OHA also illegally not considered these grounds and has mechanically and in pre determined manner merely remanded the matter to the AO leaving the door open for the AO to rectify the mistake already committed in view of the grounds of objection by the appellant/objector company in its objections before the ld. OHA.

viii) That the impugned notices of penalties D/s 86(10) & (14) are illegal and void. The ld. OHA except remanding the matter back to the Assessing Officer on the ground that the impugned orders of assessment and penalties were framed by the Assessing Authority Ex-parte, and hence the matter has been remanded back to provide another opportunity to the dealer/ of being heard in the interest of justice and allow the dealer to produce/submit the

documents of his contentions. But the ld. OHA has not decided the issue of penalties u/s 86(10) as well as U/s 86(14) of the DVAT Act as the penalty proceedings are distinct from the assessment proceedings. Once, the ld. OHA remands the assessment back to the Assessing authority be an ex-parte assessment order with the direction to afford opportunity to the dealer appellant, shows that the ld. OHA was convinced that the dealer/appellant was not served with any notice for 22/0112014 as alleged by the Assessing Officer. Therefore, in these circumstances the penalty u/s 86(14) could not have been sustained nor could have remanded back but the penalty has to be deleted because the penalty was levied for non compliance of notice for 22.01.2014. Thus, the penalty U/s 86(14) of the DVAT Act and not deleting the penalty by the ld. OHA in view of the above facts and circumstances is illegal and void.

10. Heard to applicant's Ld. counsel Mr. V. Lalwani and Mr. C.M. Sharma on behalf of the revenue and perused the file, on the basis of which present appeals are being disposed off as follows.

11. As averred above, Enforcement officials of the Department of Trade & Taxes, visited the business premises of the appellant company on 14/5/2013 and conducted survey. In survey, the visiting officials found variation in stock as well as in cash in hand. Later on, VATO (Enforcement) issued notices of default assessment of tax and interest dated 19/2/2014 and vide notice dated 20/2/2014 imposed penalty u/s 86(10) of the DVAT Act. Further, vide notice dated 19/2/2014, a penalty of Rs. 50,000/- was also imposed u/s 86(14) of the DVAT Act for non-appearance on the date fixed.

12. Appellant has assailed the impugned orders on various grounds. Firstly, while conducting survey, according to appellant, visiting team compelled appellant to deposit an amount of Rs. 7,00,000/-, failing which further coercive action would be taken against him. So the appellant deposited a sum of Rs. 5,00,000/- and Rs. 2,00,000/- totaling Rs. 7,00,000/-. Rs. 3,50,000/- was deposited against the demand likely to be created for assessment of tax and remaining Rs. 3,50,000/- was deposited on account of penalty u/s 86(10) of the DVAT Act. In this regard, appellant has submitted that without framing assessment, Enforcement officials wrongly coerced appellant to deposit this amount, which has been condemned by Hon'ble Delhi High Court in the case of Capri Bathaid (P) Ltd. Vs. Commissioner of Trade & Taxes, 2016 SCC Online Del 1332. It is correct to say that no VAT authority is supposed to collect in cash or by

cheque any alleged tax demand on the spot, while undertaking a survey or a search or a seizer operation. A procedure has been prescribed under the DVAT Act regarding deposit of due tax, interest and penalty and without framing of assessment, tax, interest and penalty cannot be collected on the basis of guess work. So appellant is entitled to refund of this amount from the revenue department.

13. Appellant has assailed the impugned orders on the ground also that VATO (Enforcement) has no power or jurisdiction to frame the assessment or impose penalty under the provision of the DVAT Act. It is only the jurisdictional VATO who can frame the assessment. In support of this argument, appellant's ld. counsel again referred to the judgment by Hon'ble Delhi High Court in the above case of Capri Bathaid (supra). It is correct to say that VATO (Enforcement) cannot frame assessment of tax, interest and penalty. He was required to submit survey report to the concerned VATO, who after giving an opportunity of hearing to appellant was supposed to frame the assessment of tax, interest and penalty. In this regard, the following observations by the Hon'ble Delhi High Court are relevant for disposal of present appeals –

> "This is significant since in the present petitions, the powers of assessment have been exercised by the AVATO Enf.-1 without there being a delineation of the specific jurisdiction of the AVATO Enf.-1 in relation to the ward in question within the jurisdiction of which the Assessee in question falls. In the absence of such a specific order, it is the jurisdictional VATO and not the AVATO Enf.-1 who will continue to exercise the power of assessment vis-à-vis the Assessee."

1. In this regard, before proceeding further, it would also be appropriate to record following observations by Hon'ble Supreme Court in the celebrated judgment of Commissioner of Sales Tax, UP Vs. Sarjoo Prasad Ram Kumar which are as follows –

> "Lucknow was one of the circles formed under the U.P. Sales Tax Act, 1948, and, in that circle, there were several Assistant Sales Tax Officers. The assesse carried on his business in Sector III for which sector there was a separate Assistant Sales Tax Officer. For the assessment year 1959-60, the Assistant Sales Tax Officer, Sector II, issued to the assessee a notice under section 21 of the Act and, in due course, made an assessment on him. It was not shown that the Assistant Sales Officer, Sector II, had also been conferred with jurisdiction to assess the dealers in Sector III. On appeal, the assessee contended that the Assistant Sales Tax Officer, Sector II,

had no jurisdiction to assess him. That contention was upheld by the appellate authority, the revisional authority and the High Court. On appeal to the Supreme Court:

Held, (i) that the Assistant Sales Tax Officer, Sector II, had no jurisdiction to assess the dealer in Sector III. The rule-making authority had empowered the Commissioner to allocate separate areas for separate Assistant Sales Tax Officers. When such an allocation was made, the jurisdiction of each officer was confined to the area allotted to him;

(ii) that unless there was some provision either in the Act or in the Rules framed which precluded the assessee from raising any objection as to jurisdiction, if the same was not raised before the assessing authority, the assessee could not be precluded from raising that objection at a later stage. An objection as to jurisdiction goes to the root of the case."

14. The ratio of the above cases squarely applies to the facts of present appeals also as appellant comes under the jurisdiction of Ward-89. AVATO (Enforcement) was not conferred powers to assess by the ld. Commissioner specifically, hence AVATO (Enforcement) had no jurisdiction to frame assessment of tax, interest and penalty dated 19/2/2014 and 20/2/2014 and on this ground also impugned orders dated 22/2/2018 and review order dated 21/5/2018 are also liable to be set-aside.

15. The appellant has also assailed the impugned orders dated 22/2/2018 and review order dated 21/5/2018 passed by ld. OHA, on the ground that ld. OHA had no power to remand the record back to the concerned jurisdictional VATO. Review application was also rejected vide orders dated 21/5/2018 on the ground that no fresh ground has been taken by the appellant. Appellant assailed the assessment orders on the legal grounds but ld. OHA instead of disposing objections on merit remanded the file back to the concerned jurisdictional VATO for framing re-assessment on the ground that original order was an ex-parte order. In this regard, I agree to the submissions made by the appellant's ld. counsel that ld. OHA was required to dispose of objections on merit only, when all material was present before him. In fact, by remanding back the record to the concerned jurisdictional VATO, ld. OHA was removing the legal mistakes committed in original assessment orders, which is not allowed as per law. Hence, on this ground also impugned order dated 22/2/2018 and review order dated 21/5/2018 are liable to be set-aside.

16. Appellant has also assailed the impugned assessment orders on the ground that visiting officials of the Enforcement team did not carry

with them authority in form-DVAT-50, which is a mandatory requirement. No evidence to prove this fact has been filed on behalf of the revenue side. Hon'ble Delhi High Court in the above celebrated case of Capri Bathaid (supra), held that visiting Enforcement officials were required to have authority in DVAT-50 to be issued by the ld. Commissioner or any other competent authority on behalf of him. Hence, on this ground also impugned assessment orders of tax, interest and penalty are liable to be set-aside.

17. Appellant has also assailed the imposition of penalty on the ground that no notices were issued before framing the assessment order of penalty. Hon'ble Delhi High Court in the judgment of Bansal Dye Chem (P) Ltd. Vs. Commissioner of Value Added Tax, Delhi & Ors. (DSTC 2014) 52 HC J-396, made following observations which are relevant to decide whether in the present facts and circumstances, penalty was rightly imposed-

> "The very nature of the proceedings under section 33 of the DVAT Act read with Rule 36 (2) of the DVAT Rules underscore the need for the VATO to observe the principles of natural justice while making the penalty order. This entails serving on the Assessee a separate notice to show cause why penalty should not be imposed and affording the Assessee an opportunity of being heard prior to passing the penalty order. The imposition of penalty is not a mechanical or automatic exercise but requires application of mind by the assessing authority to the facts and circumstances of the case. The fact that an Assessee is found liable to pay enhanced taxes and interest does not ipso facto determine whether the Assessee is also liable to pay a penalty".

18. It is clear from the facts of the present case that penalty orders were also passed ex-parte u/s 86(10) of the DVAT Act. No record or evidence has been produced by the revenue side to prove that prior notices and opportunity of hearing was given to the appellant before imposing penalty. Secondly, penalty was also imposed u/s 86(14) of the DVAT Act. It was alleged that appellant was issued notices dated 15/1/2014 to appear on 22/1/2014 but in this regard also, no record has been produced by the revenue side as to when and if at all notices were served on the appellant. In light of these facts, the ratio of above case squarely applies to the facts of the present appeals and on this ground, penalty orders u/s 86(10) and 86(14) are liable to be set-aside.

19. Appellant has also assailed the impugned orders on the ground that impugned orders dated 22/2/2018 were passed after expiry of 15

days of issue of notices in form-DVAT-41 u/s 74(8) of the DVAT Act to the ld. OHA, hence objections will be deemed to have been allowed and ld. OHA had no power or jurisdiction to pass the orders on 22/2/2018. In this regard, section 74(7), 74(8) & 74(9) of DVAT Act are relevant. Under section 74(7) DVAT Act, the ld. OHA is required to dispose of objections within a period of three months and u/s 74(8), where the ld. OHA has not notified the person of a decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within 15 days. And according to section 74(9), if the decision has not been made by the end of the period of 15 days after being given the notice referred to in sub-section(8) of this section, then, at the end of that period, the ld. OHA shall be deemed to have allowed the objections. It is clear from the facts of the present appeals that on expiry of period of three months from date of filing of objections, appellant moved an application in DVAT-41 on 6/2/2018 u/s 74(8) of the DVAT Act but despite this application, ld. OHA decided the objections on 22/2/2018, while period of 15 days expired on 21/2/2018, within which period, ld. OHA was supposed to dispose of objections, hence due to this reason also objections will be deemed to have been allowed as per section 74(9) of the DVAT Act. On this ground also appeal is liable to be allowed.

20. On the basis of above discussion, impugned order dated 22/2/2018 and review order dated 21/5/2018, passed by ld. OHA are liable to be set-aside and accordingly present appeals are allowed.

21. Order pronounced in the open court.

22. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

[2017] 57 DSTC 261 (Delhi)

Before the Objection Hearing Authority
Department of Trade & Taxes, Delhi

Objection No. 474735
Ref. No. 80979

Maheshwari Enterprises ... Objector

Date of Order: 22.08.2019

PENALTY – SECTION 86 (14) OF DVAT ACT, 2004 – PENALTY IMPOSED OF RS. 50,000/- FOR FAILURE TO COMPLY WITH NOTICE U/S 59 (2) – ADMINISTRATIVE CIRCULARS COULD NOT OVERRIDE THE PROVISION OF THE ACT – PENALTY REDUCED TO RS. 10,000/- AFTER CONSIDERING THE OVERALL TURNOVER AND QUANTUM OF TAX.

Present for the Objector : Sh. Parveen Mahajan, Adv.

ORDER

M/s. Maheshwari Enterprises, TIN No. 07940130129, a dealer of Ward-102 has filed the above objection under Section 74(1) of the DVAT Act, 2004 in Form DVAT-38 dated 23.07.2019. The objection is against notice of assessment of penalty under section 33 read with Section 86(14) of the DVAT Act, for the tax period of 2014-15 issued on 23.03.2019 by the VATO, Ward-102.

2. Facts of the case, in brief, are that vide order dated 23.03.2019, the assessing authority, Ward-102 has imposed the penalty of Rs. 50,000/- on the dealer for failing to comply with the notice u/s 59(2) of the DVAT Act, 2004. The said notice required the dealer to produce relevant documents pertaining to year 2014-15. The reason for imposing the penalty is that the dealer has not made compliance according to notice issued.

3. Grounds taken by the objector in the written submissions filed are that:-

i) The said notice 59(2) dated 15.02.2019 on which basis the penalty had been imposed, was neither received by the dealer nor in the knowledge of the dealer.

ii) The alleged notice u/s 59(2) dated 15.02.2019 is illegal because the same had not been issued as valid notice on the following reasons:

a) In the case of M/s Bhumika Enterprises their lordships of the Delhi High Court had quashed the system generated orders and notices.

b) In the case of M/s Swastik Polymers the Hon'ble High Court directed that the notice or order must be digital signed before uploading on the system, Proper record must be maintained while uploading the notice or order.

c) Since this is the case of system generated notice which is unsigned, must be stood as illegal notice. If the notice is illegal the order passed on the base of illegal notice must also be stood illegal and liable to be quashed.

iii) The alleged notice was issued for assessment for period 01.04.2014 to 31.03.2015. But if we go through various circulars issued by the ld. Commissioner, VAT no such notice for assessment should be required to be issued if Form 9 has been filed and available on the record.

4. Sh. Praveen Kumar Mahajan, Advocate appeared before the undersigned on behalf of the objector and reiterated the facts mentioned in DVAT-38 applications.

5. I have heard the arguments made by the objector, the impugned assessment orders issued by the VATO, Ward-102 23.03.19 and also referred the orders of the Hon'ble High Court. The penalty has been imposed for the limited reason of non-compliance of notice u/s 59(2). Administrative circulars cannot override the provisions of the Act. The Assessing Authority is within his rights to exercise his jurisdiction in accordance with the law.

However, considering the overall turnover of the dealer and quantum of tax a lenient view is taken and penalty is reduced to Rs. 10,000/-.

6. The objector shall deposit the reduced penalty amount under DVAT of the impugned penalty order within a period of 15 days from the date of this order and produce proof of deposit of the same before the Ward Officer immediately thereafter.

Ordered accordingly.

Judicial vis-á-vis Quasi Judicial Proceedings

by
H.L.Taneja, M.A., LL.B. (Advocate)

The aim of both Judicial and Quasi-Judicial Authorities is to do justice. Justice, as held by the Hon'ble Supreme Court in its judgment in the case of S. Nagaraj v. State of Karnataka[1], "*is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice*."

2. All the same, there is distinction between judicial functioning and quasi-judicial proceedings. Some of the cases which have highlighted this distinction are as under :-

(i) Supreme Court judgment in the case of Neelima Misra v. Harinder Kaur Paintal (Dr.)[2]:

> *"....An administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice. Where there is no such obligation the decision is called 'purely administrative' and there is no third category. This is what was meant by Lord Reid in Ridge v. Baldwin[3]*

(ii) Subba Rao J., as he then was, speaking for this court in G.Nageswara Rao v. Andhra Pradesh State Road Transport Corporation[4]:

> *"The concept of a quasi-judicial act implies that the Act is not wholly judicial, it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power.."*

(iii) Prof. Wades[5] says,

"A judicial decision is made according to law. An administrative

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1 1993 supp .(4) sec 595-618 para 18

2 AIR 1990 se1402 -1408

3 (1963) 2 All ER66, 75-76 (HL)

4 (1959) (Supp.) 1 SCR 319=AIR 1959 se308 (at p.353 of SCR) (at p.326 of AIR)

5 Adm in istrative Law by H.W.R.Wade, 6th Edn., pp,46 -47

decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."

(iv) The Hon'ble Delhi High Court in its judgment in the case of Gee Vee Enterprises v. Additional Commissioner of Income-Tax, Delhi I and Ors.[6] :

"..... The position and function of the Income-Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The INCOME-Tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke on enquiry."

3. Notwithstanding the above distinction between the judicial and quasi-judicial proceedings there are certain similarities between these proceedings, as given hereunder :-

(i) Supreme Court judgment in State of Orissa v. Nalinikanta Muduli[7] wherein it is held as under, inter-alia :-

"B. Advocates - Generally - Members of the Bar, held, are officers of the court - They have a bounded duty to assist the court and not mislead it - Citing an overruled decision before a court without disclosing the fact that it has been overruled, held, is a matter of serious concern."

(ii) Delhi High Court judgment in the case of Sita Juneja & Associates[8] in which the Hon'ble Delhi High Court held that :-

"whenever judicial or quasi-judicial power is vested in a person the decision must be his. Even though he may obtain the assistance

6 (1975) 99 ITR 375-386

7 2004 (7) see 19

8 (1998-99) 38 DSTC 60

of other persons, he cannot be influenced by anyone in coming to the decision. In short, the jurisdiction so conferred can neither be tampered nor tinkered."

(iii) In the same way, Hon'ble Supreme Court in the case of Orient Paper Mills Ltd. v. Union of India[9] held that

"assessing authority under various taxation laws exercise quasi-judicial function. The duty cast on them is to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector, it cannot be said to be their independent judgment in any sense of the word."

(iv) The Hon'ble Supreme Court, in Commissioner of Income-Tax, Bombay v. Walchand & Company Pvt.Ltd.[10] inter-allia, observed,

"Though the Tribunal is not a court, it is invested with judicial power to be exercised in a manner similar to the exercise of power of an appellate court acting under the Code of Civil Procedure."

4. Guiding factor in Quasi-Judicial proceedings: -

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter-allia for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.

If the substantive provision of a statute provides for refund, the State ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded . If a tax has been paid in excess of the tax specified, save and except the cases involving the principle of 'unjust enrichment' , excess tax realized must be refunded. The State, furthermore is bound to act reasonably having regard to the equality clause contained in article 14 of the Constitution of Indla.[11]

5. Relevance of a Constitution Bench judgment of the Hon'ble Supreme Court in Dhakeswari Cotton Mills Ltd. v. CIT[12], where Hon'ble Supreme Court held as under :-

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9 1978 (2) ELT 382

10 (1967) 65 ITR381-382

11 Supreme Court judgment reported (2015) 80 VST 1- 11

12 (1954) 26 ITR775-782

"As regards the second contention, we are in entire agreement with the learned Solicitor-General when he says that the Income-Tax Officer fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in the court of law but there the agreement ends; because it is equally clear that in making the assessment order sub-section (3) of section 2 of the Act, the Income-Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment order under section 23(3). The rule of law on this subject has, in our opinion, been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. CIT[13]

In this ease, we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the Departmental representative. Next it did not give any opportunity to the company to rebut the material furnished to it by him, and, lastly, it declined to take all the material that the assessee wanted to 'produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income-Tax Officer and the tribunal, seems to based on surmises, suspicions and conjectures."

6. The All India Federation of Tax Practitioners in its journal for the month of March, 2015 inter-allia wrote as under :-

"Amendments to the fiscal laws each year is a regular feature. But the Federation is of the opinion that whatever may be the law, unless the provision of accountability is introduced in the Act, honest tax payers will have to suffer at the sweep mercy of few adventurous tax officials, and, therefore, it is essential for the law makers as well as the federation to focus the attention on this vital issue till such time the success is achieved in this behalf."

The suggestion is indeed laudable because it is common knowledge that in taxation litigation, particularly, in the matter of imposition of penalties there is much arbitrariness. In this connection the observations of the Hon'ble Rajasthan High Court made in its judgment in the case of Chiranji Lal Tak v. Union of India[14] are quite apposite :-

13 (1944) 12 ITR393 (Lahore)

14 (2001) 252 ITR 333-335 (Raj.)

"Litigation is not a luxury and/ or amusement of entertainment. It is not pleasure or pleasant to come to the Courts. Only when the Union or a State or its officers make it unavoidable, the litigants come up before the Court for redressal of their grievances or for enforcement of their legal or fundamental rights. The litigation is heavily costly"

Some of the essential factors where the Assessing Authorities need to strictly follow while making assessments are as under :-

S. No.	Court	Principle decided by the judgment
1.	Supreme Court[15]	"Tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural just ice in reaching their conclusions. Although a taxing officer is not fette red by technical rules of evidence and pleadings and he is entitled to act on materials which may not be accepted as evidence in the court of law that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice."
2.	Supreme Court[16]	"A humane and considerate administration of the relevant provisions of the Income Tax Act would go a long way in allaying the apprehensions of the assessee and if that is done in the true spirit, no assessee will be in a position to charge the revenue with administering the provisions of the Act with 'an evil eye' and unequal hand."
3.	Supreme Court[17]	"The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee."
4.	Supreme Court[18]	"Tax planning within framework of law is legitimate."
5.	Punjab & Haryana High Court[19]	"It is a legitimate attempt on the part of the assessee to save money by following a legal method. If on account of a lacuna in the law or otherwise the assessee is able to avoid payment of tax with in the letter of law, it cannot be said the action is void because it is intended to save payment of tax. So long as the law exists in its present form, the tax payer is entitled to take its advantage. We find no ground to accept the contention that merely because the gift was made with the purpose of saving payment of wealth tax, it needs to be ignored."

15. (1977) 39 STC 478 (SC) = AIR 1977 SC 1627 = (1977) 2 SCC 777
16. (1957) 31 ITR 565-597
17. (1976) 105 ITR212
18. (1990) 184 ITR308

6.	Orissa High Court [20]	"It has to be borne in mind that an assessee may be bad enough, but there is no reason why the assessing authorities must be worse and must not conform to the requirements of law in making a best judgment assessment. Observance of the rule of law is of vital importance and is compulsory not only for those who are to obey the law, but also for those who are to enforce the same."
7.	Allahabad High Court[21]	"Law does not take notice of trifles."
8.	Supreme Court[22]	"The order of the higher judicial authority should be followed by the sub-ordinate authority."
9.	Delhi High Court[23]	“The need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment require that all similar matter should receive similar treatment.”
10.	Supreme Court[24]	"Administrative Law - Reasonable opportunity of being heard - To be read into provision, where provision would otherwise be challenged as invalid."
11.	Karnataka High Court[23]	“The grant of opportunity should not be merely formality but should be such as can be reasonably availed of. Requiring a person to do something in a short period within which time it cannot be performed, would amount to denial of fair opportunity. Merely completing the formality of issuing notice and not considering the reasons given in the reply for grant of further reasonable time to furnish the documents , would not amount to giving adequate or fair opportunity to the party.”

19. (2002) 256 ITR 516-528
20. (1998) 111 STC 75-77 para 6
21. (1972) 29 STC 238 = (1971) UPTC 821
22. AIR1992 SC 711
23. (1998) 232 ITR 395-396
24. 199 ITR 530=(1993) 1 SCC 78=Jt.1992 (6) SC 678-698 (p.2)
25. (2016) 96 VST 434

Delegation of Authority Under Delhi Value Added Tax: DVAT 50

by
Amit Sharma, Advocate

Abstract

Delhi Value Added Tax Act, 2004, extends to whole territory of Delhi and Commissioner has been empowered to exercise all the powers & functions, however, he has also been empowered to delegate all or any of powers provided under the Act. Special provisions for delegation of power under Chapter X are provided, for which delegation in a prescribed Form DVAT-50 is required to be issued by the Commissioner. This is so because powers under Chapter X are considered to be special powers given to Commissioner including Audit, Special Audit, Power to Search However, the delegation in the Form DVAT 50 has been into litigation in various cases and numbers of amended DVAT 50 have been issued in compliance of the directions of court. This paper is an attempt to examine the various provisions as well as the case laws on the issue.

Introduction

There is plethora of precedent swinging the sword on revenue side on the issue of delegation of authority by the Commissioner under DVAT Act, 2004, specifically under Chapter X of the act. The basic concept and principle of the hierarchy, that is, scalar factor, binds together the different units and levels of the organization with a continuous chain of authority; and the essence of this principle is the delegation of authority. Here, firstly it is important to understand the meaning and importance of delegation in general parlance. Mooney has defined *delegation* as conferring of specified authority by a higher to a lower authority. According to Terry, *delegation* means conferring authority from on executive or organizational units to another. In the words of Millet, *delegation of authority* means more than simply assigning duties to others in more or less detail. The essence of delegation is to confer discretion upon others, to use their judgment in meeting specific problems within the frame work of their duties.[1]

All the functions or powers under the Act are exercised by the Commissioner and for this he is assisted by VAT Authorities appointed under the Act. It is to be noted that in practice general delegation has been done by the Commissioner, VAT whereby he has delegated functions

1 "*The essence of the principle of delegation of authority*", Dr. S. B. M. Marume, Prof. Ndudzo & Dr. Chikasha, Journal of Research in Humanities and Social Science Volume 4 ~ Issue 6(2016) pp: 10-14

& powers from time to time under various sections of the Act. However, having regard to the significance of the functions & powers provided under Chapter X of the Act, specific form as well as procedure has been provided under the Act and the rules made there under.

Value Added Tax Authorities

The Government for carrying out the purposes of this Act appoints the Commissioner of Value Added Tax.[2]The Government to assist the Commissioner may also appoint Special Commissioner, VAT Officers and such other persons as necessary.[3] The Commissioner may with previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties. Other persons so appointed may be designated as Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Assistant VAT Officer, VAT Inspector.[4] The Commissioner of Value Added Tax ('CVAT') and the VAT Authorities can exercise only such powers and perform such duties as may be required by or under the DVAT Act.[5] Section 66 (4) clarifies that the powers exercised by the VAT Authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of the entitlement and the amount of any refund, the determination of specific questions under Section 84, the making of general rulings under Section 85 and the conduct of audit or investigations shall be the 'administrative functions'.

Delegation under the Act

Section 67 (1) of the DVAT Act states that the Commissioner, VAT shall have jurisdiction over the whole of Delhi and shall have responsibility for the due and proper administration of the DVAT Act. Under Section 67 (2) the CVAT may, from time to time, issue such instructions, orders and directions to any VAT Authority as he thinks fit for the due and proper administration of the DVAT Act and all such persons engaged in the administration shall observe and follow such orders, instructions and directions of the CVAT. Under Section 67 (4), the CVAT can issue general orders, instructions and directions to any person. Section 68(1) empowers Commissioner to delegate any of the powers under the Act. However, delegation of power under Chapter X has to be made in the prescribed form and shall be produced on demand.[6]

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2 Delhi Value Added Tax Act, 2004, s. 66(1)

3 Delhi Value Added Tax Act, 2004, s. 66(2)

4 Delhi Value Added Tax Rules, 2005, Rule 47

5 Delhi Value Added Tax Act, 2004, s. 66(3)

6 Delhi Value Added Tax Act, 2004, s. 68(2)

The above delegation of CVAT's powers under Section 68 of the DVAT Act has to be read along with Rule 65 of the Delhi Value Added Tax Rules, 2005[7] which provides that delegation of power under Chapter X shall be in Form DVAT 50.[8]This DVAT 50 is to be carried by the officer purporting to exercise power delegated under Chapter X and also to produce the same on request of owner or occupier of the premises.[9]

There have been empowerment orders issued by the Commissioner under Section 68 (2) to various DVAT officers exercising powers under different sections. One such order issued under Section 68 of DVAT Act is dated 12th November 2013. The said delegation empowers various officers to exercise power "within their respective jurisdiction". A table is set out in which the first column indicates the S.No., the second column indicates the relevant provisions of the Act, the third column contains a description of the powers under the said provision and the fourth column states the designation of the officer to whom the power is delegated.

In the recent case, Capri Bathaid Pvt. Ltd. vs. Commissioner, Trade & Taxes (*Supra)*, where the issue involved that whether the Assistant VAT Officer (Enforcement Branch) has power to make assessment of tax, interest & penalty of a dealer falling under he territorial jurisdiction of ward. The issue was also of delegation and exercise of power without the prescribed form i.e. DVAT 50. It was argued by the revenue that delegation dated 12.11.2013 has empowered officers "within their respective jurisdiction" and here phrase "respective jurisdiction" refers to the designation of the officers and to the territorial jurisdiction which has not been provided under the Act.

However, court observed that it is significant that the delegation of powers by the CVAT, in the first place, the officers to whom powers have been delegated are to exercise the powers and perform the duties of such powers "within their respective jurisdictions". This is critical since it conveys the intention that the exercise of powers by an officer is to be restricted to a certain jurisdiction. For instance, in terms of the above order, the officer not below the rank of AVATO will not exercise the power vested under Sections 32 and 33 of the DVAT Act vis-a-vis a dealer who is outside the ordinary jurisdiction of such officer. Otherwise, officers who are delegated such powers could begin to exercise such powers in respect of dealers not within their jurisdiction. That apart, there can be an overlapping of

7 Capri Bathaid Pvt. Ltd. Vs. Commissioner, Trade & Taxes WPC No. 8913 of 2014

8 Delhi Value Added Tax Rules, 2005, Rule 65(1)

9 Delhi Value Added Tax Rules, 2005, Rule 65(3)

the exercise of jurisdiction by different officers that can result in undue harassment of the dealer and administrative chaos. Th The court referred to the judgments in ***Commissioner of Sales Tax, UP v. Sarju Prasad Ram Kumar***[10]***, K. Packirisamy v. Deputy CTO (Enforcement-I)***[11] and ***Commissioner of Customs v. Syed Ali.***[12]

It was also pointed by the court that the DVAT 50 dated 15.10.2014 relied upon by the revenue, was issued by the Special Commissioner (HR) and revenue failed to show that how Special Commissioner (HR) had been authorized to issue DVAT 50. The court in this particular case, while deciding against the Department, directed Commissioner VAT to ensure not to have any overlapping of powers and also to ensure that delegation must be specific & there should be no room for ambiguity. The legality of exercise of power under section 60 and DVAT 50 under the Act has also been challenged & discussed in ***Larsen and Toubro Limited v. Govt. of NCT of Delhi***[13]***.*** It is to be noted that revenue never disputed Capri Bathaid judgment and even in compliance issued various circulars dated 11.04.2016.[14]

In the matter of *ITD-ITD CEM JV*[15]*,* in which audit of the dealer registered in Special Zone (Work Contract) was assigned to VATO (Audit), who subsequently made assessment of tax & interest. The audit was monitored by the Central Vigilance Commission. The action of the VATO (Audit) was challenged being without jurisdiction and without Form DVAT 50. The court in its order dated 03.10.2016 quashed the audit report as well as set aside the assessment of tax, interest & penalty holding that case is squarlly covered by the judgment of Capri Bathaid (Supra).

Conclusion

Delegation under administrative mechanism is provided to ease out the functioning and for the better administration. However, it may be detrimental, if not done as per law. We may point out that the facts in the *ITD-ITD case* (Supra) are different from *Capri Bathaid* as much the former relates to the exercise of Audit function which includes assessment of tax & penalty u/s 32 & 33 respectively provided u/s 58 which is completely

10 1976 (37) STC 533 (SC)

11 2006 (147) STC 368 (Mad)

12 2011 (26) ELT 17 (SC)

13 W.P. (C) No. 1820 of 2013.

14 F.No.7(5)/L&J/Circular/2016/372, F No.7(3)/L&J/Circular/2016/270-274 and F.No.7(6)/L&J/Circular/2016/373.

15 ITD-ITD CEM JV vs. C&TT, WP(C) No. 6335 of 2014.

distinguished from the power to enter premises and seize records & goods envisaged u/s 60 of the DVAT Act, 2004. Also, in terms of the language used under Rule 65, Form DVAT 50 may not be mandatory in case of Desk Audit conducted in the Audit Branch of the Revenue Department and the authorization in Form DVAT 50 is mandatory only in such cases where Chapter X powers are intended to be exercised in the premises of any dealer. These points will remain debatable and controversial.

The court has observed that jurisdictional issue goes into the roots, hence did not go into the merits of the above stated cases. We may, however, appreciate that these cases have brought such issues in light and to some extent, clarified the practice & removed ambiguity.

INHERENT POWERS

by
H. L. Taneja M.A., LL.B (Advocate)

Introduction

Section 151 of the Code of Civil Procedure, 1908 reads as under :-

> "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the Court."

I. Scope of Application

(a) The inherent powers of the court under section 151 of the Code of Civil Procedure has been dealt with by the Supreme Court in its judgment in the case of Jet Ply Wood (P) Ltd. v. Madhukar Nowlakha[1] wherein, the Court held :-

> "There is no doubt in our minds that in the absence of a specific provision in the Code of Civil Procedure providing for the filing of an application for recalling of an order permitting withdrawal of a suit, the provisions of section 151 of the Civil Procedure Code can be resorted to in the interest of justice. The principle is well established that when the Code of Civil Procedure is silent regarding a procedural aspect, the inherent power of the court can come its aid to act ex debito justitiae for doing real and substantial justice between the parties. This court had occasion to observe in Manohar Lal Chopra v. Rai Bahadur Rao Raja seth Hiralal[2] :-
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> "it is well settled that the provisions of the code are not exhaustive for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them."

(b) The scope and ambit of the powers of the High Court under section 482 CrPC have been elaborately dealt with by a three-judge Bench of the Supreme Court in Inder Mohan Goswami v. State of Uttaranchal[3], in the following words :-

> "23.....Every High Court has inherent power to act as debito justitiae to do real and substantial justice for the administration of

which alone, the court exists, or to prevent abuse of the process of the court. Inherent power [of the court] under Section 482 CrPC can be exercised [in the following categories of cases] :

(i) *to give effect to an order under the Code;*

(ii) *to prevent abuse of the process of court, and*

(iii) *to otherwise secure the ends of justice.*

24. inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. if any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."

Affirming the order in M.M. Thomas v. State of Kerala[4], held

"There is no doubt that the High Court possess all powers in order to correct the errors apparent on the face of the record. The High Court has not only the power, but a duty to correct any apparent error in respect of any order passed by it. This is the plenary power of the High Court."

(c) The Madras High Court observed in its judgment in Prasad Properties & Investment Pvt. Ltd. v. State of Tamilnadu & Anr.[5] :-

"The power of the court does not end with the passing of the order, but more so, in seeing that the order is implemented in letter and spirit, howsoever difficult it may be. In case where the orders passed by the court are not implemented, the court, in exercise of the inherent powers, should see to it that the orders passed by the court are implemented."

(d) The Delhi High Court in the case of M/s. Rahul Enterprises v. Commissioner of Sales Tax, Delhi[6] decided that the Commissioner in determination proceedings u/s. 49 of the Delhi Sales Tax Act, 1975 had power to impose costs for seeking adjournment of the case fixed before him. The brief facts and the ratio of the judgment of the case, were as under :-

Determination proceedings u/s. 49 of the Delhi Sales Tax Act, 1975 implied that the jurisdiction vested in the Commissioner was quasi-judicial in nature. So, the parties to the proceedings had to be afforded a reasonable opportunity of hearing. If adjournment was to be liberally granted, then the adjournment may in a given set of facts amount to abuse of the process of law. In this case for grant of adjournment cost of Rs.200/- was imposed. In the affidavit filed before the High Court, the counsel prayed that the adjournment was sought because the counsel for the petitioner was indisposed, and further stated that there were earlier adjournments but none at the instance of the petitioner. In the facts and circumstances of the case, the High Court held that the Commissioner had jurisdiction to impose costs but the jurisdiction was not properly exercised and the cost imposed was not sustained. The High Court relied on the following principles :-

> J.K. Synthetics Ltd. Vs. Collector of Central Excise, 1996 (6) SCC 92, UOI Vs. Paras Laminates (P) Ltd. 1990 (4) SCC 453, ITO Connanore Vs. M.K. Mohd. Kunhi AIR 1969 SC 430, ACC Ltd. Vs. PM Sharma AIR 1965 SC 1595, Maritn Burn Ltd. Vs. R.N. Banerjee AIR 1958 SC 79, Central Manbhum Coal Co. Vs. Addl. Collector Dhanbad AIR 1983 Cal. 95 (DB).

In Mohd. Kunhi's case (supra) their Lordship have quoted with approval from Sutherland on Statutory Construction "an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective." Maxwell on interpretation of Statutes has been quoted saying "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. Cui jurisdicto data est., ea. quoqum ……. ease videntur, sine quibus jurisdictio explicari non potuit." An instance is given based on Ex parte Martan that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, nor the power would be useless if it could not be enforced."

In Mohd. Kunhi's case the question had arisen in the contest whether the Income-Tax Appellate Tribunal can grant a stay if there was no express provision conferring such jurisdiction on it. Their Lordship held that the Tribunal while exercising appellate jurisdiction which is judicial in nature, impliedly possessed the power of doing of such acts, or implied such means as are essentially necessary for its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceedings as will prevent an appeal if successful from being rendered nugatory.

II. Reasons For Invoking Inherent Jurisdiction :

The Supreme court in its judgment in the case of State of Jharkhand & Ors. v. Tata Steel Ltd. & Ors.[7] after referring to judgments K.P. Varghese v. ITO[8] and Luke v. Inland Revenue Commissioners[9], observed :-

> "The courts must always seek to find out the intention of the Legislature. Though the courts must find out the intention of the statute from the language used , but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity….."

III. Inherent Jurisdiction – Where to be Invoked :

(i) Allahabad High Court judgment in the case of Shalimar Furnishers v. The State of Uttar Pradesh[10]*, held that*

> "If an order has been made without notice to a party when that party has right to be heard, the court or the judge has inherent jurisdiction to set it aside."

(ii) Delhi High Court judgment (Full Bench) in the case of Narula treading Agency v. CST, Delhi[11], Held

> "Inherent jurisdiction or power is inherent in a court. Section 151 of the Code of Civil Procedure does not confer such jurisdictions or power on the court but merely saves it because it already exists there. But inherent jurisdiction of a court can be invoked only when there are no specific provisions to meet the necessities of a case. Where there are specific provisions such as in the Delhi Sales tax Act, 1975, the inherent jurisdiction cannot be invoked. To exercise the power of stay when there is a clear provision to the contrary in the Act is to fly in the face of the statute."

(iii) Karnataka High Court (Full Bench) judgment in the case of Bharat Heavy Electricals Ltd. v. State of Karnataka[12], held

> "Inherent power cannot be exercised in conflict with what has been specifically provided in the statute. Thus, if there is a specific bar or prohibition in the statute, in regard to grant of stay, obviously stay cannot be granted in exercise of inherent power."

(iv) Madras High Court judgment in the case of State of Tamilnadu v. Saganla[13], held

> "It is well settled that unless a specific prohibition is there in the section itself, section 5 of the new Limitation Act will apply."

IV. Inherent Power is Incidental Power :

(i) Karnataka High Court judgment in P. Y. Kamat & Ors. v. State of Karnataka & Ors.[14], this judgment explains, following a judgment of the High Court of Australia, what is the scope of incidental power, it is as under:-

> "Everything which is incidental to the main purpose of a legislative power is contained within the grant of the power. It carried authority to make all laws which are 'necessary or proper' to effectuate the power."

(ii) Calcutta High Court judgment in the case of S.B.I.Home Finance Ltd. v. Commissioner of Income-Tax[15], held

> "The jurisdiction to make restitution is inherent in every court and will be exercised whenever the justice of the case demands. It will be exercised under inherent powers where the case did not strictly fall within the ambit of section 144."

(iii) Allahabad High Court judgment in Mahadeo Ram Ram Jatan v. CST, U.P.[16], held

> "There is no prohibition in the Central Sales Tax act, 1956, or in the Rules framed thereunder against reissuance of 'C' forms which have been surrendered by mistake. Secondly, the effect of section 3-C of the U.P. Sales Tax Act, 1948, is that by a legal fiction a firm which has discontinued business or which has been dissolved shall be deemed to be an existing firm for the purposes of assessment of tax and penalty in respect of its turnover prior to the date of dissolution or discontinuance of business. The assessment of such a firm has to be made in the name of the firm in the like manner in which it would have been made had the firm not been dissolved. By virtue of the provisions contained in section 9(3) of the Central Act, section 3-C of the U.P. Act would be applicable to the proceedings under the Central Sales Tax Act. Therefore a dissolved firm can also ask for the issuance of 'C' forms on the basis of its registration

certificate and even can ask for registration, if it had not been previously registered."

1. (2006) 3 SCC 699=AIR 2006 SC 1260
2. (1962) Supp (1) SCR 450=AIR 1962 SC 527 (SCR page 459)
3. 2007 (12) SCC 1=AIR 2008 SC 251
4. (2000) 1 SCC 666
5. (2015) 85 VST 113
6. STI 1999 Delhi High court 1
7. (2016) 89 VST 1 – 17
8. (1981) 131 ITR 597=1981 (4) SCC 173
9. (1964) 54 ITR 692 (HL)=(1963) AC 557 (HL)
10. (1975) 36 STC 451
11. (1981) 47 STC 45
12. (2006) 147 STC 638
13. (1993) 88 STC 17 – 18
14. (1988) 68 STC 3 – 13
15. (2001) 249 ITR 438 – 445
16. (1970) 26 STC 186

DISCRETIONARY POWERS

by
H. L. Taneja M.A., LL.B (Advocate)

Introduction

The Hon'ble Supreme Court, in its judgment in the case of CIT, W. Bengal-I v. Simon Carves Ltd.[1] observed as under :-

> "The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee."

The advice of the Hon'ble Supreme Court can be complied with if the discretion, when necessitated, is exercised according to law and also, there is no violation of the rules of natural justice which are implicit in every provision though not specifically mentioned[2]. In this article we are confined to exercise of discretion according to settled principles of law.

Necessity For Exercising Discretionary Powers :-

(I) Supreme Court judgment in the case of Khudiram Das v. The State of West Bengal & Ors.[3] observed as under :-

> " …. when it is said that something is to be done within the discretion of the authorities…….. that something is to be done according to law and not humour. It is to be not arbitrary, vague, fanciful, but legal and regular."

(II) Hon'ble Delhi High Court in the case of Vijay Power Generators Ltd.v. CST, Delhi[4] it was held

> "The discretion conferred on the concerned authority to dispense with pre-deposit conditionally or in full or in part is governed by the maxim discretioest discernere per legen quid sit justum (discretion consists in knowing what is just in law). Discretion in general is the discernment of what is right and proper : it denotes knowledge and prudence, that discernment which enables a person to judge critically of what is correct and proper united with caution, to discern between falsity and truth, between shadow and substance, between equity and colourable glosses and pretences and not to

do according to the will and private affections or ill-will. It has to be done according to the rules of reason and justice, not according to private opinion. It has to be done according to law and not humour. It has to be not arbitrary, vague and fanciful but legal and regular."

(III) Hon'ble Gujrat High court judgment in the case of Wood Polymer Limited, In re. and Bengal Hotels Pvt.Ltd., In re.[5] observed as under :-

"When, "said Lord Halsbury L.C., "it is said that something is to be done within the discretion of the authorities …… that something is to be done according to the rules of reason and justice, not according to private opinion …… according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

(IV) Hon'ble Madhya Pradesh High Court judgment in the case of CST, Madhya Pradesh v. S.Kumars Ltd.[6] reported as under :-

"It emerges from the aforesaid provision that the Commissioner or appellate authority is empowered to impose penalty. The word used is "may". This shows that the discretion is conferred. But as stated by Lord Mansfield in classic terms in John Wilkes' case (1770) 4 Burr 2528, the discretion is required to be sound and has to be regulated by law and governed by rules. In other words, it cannot be arbitrary or capricious. The discretion is exercisable on satisfaction that the dealer has concealed the turnover or aggregate of purchase prices or has furnished inaccurate particulars or has furnished false return. The ground pressed by the applicant before the Tribunal was that it was a case of submission of incorrect return. In other words, it was not contended by the applicant that, it was a case of inaccurate particulars or .false return."

(V) Hon'ble Madras High Court judgment in the case of K. M. Rahmath Bibi v. First ITO, Nagapattinam[7] observed as under :-

Reference has been made by the learned Chief Justice to the classical dictum in Maxwell :

"'According to his discretion' means, it has been said, according to the rules of reason and justice, not private opinion, according to law and not humour; it is to be not arbitrary, vague and fanciful, but legal and regular; to be exercised, not capriciously, but on judicial

grounds and for substantial reasons. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself, that is, within the limits and for the objects intended by the legislature. These dicta may be summed up in the statement of Lord Esher that the discretion must be exercised without taking into account any reason which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion then in the eye of the law, they have not exercised their discretion."

(VI) Hon'ble Bombay High Court judgment in the case of Addl. Commissioner of Income-Tax, Mysore v. Krishna Narayan Naik[8] observed as under :-

"Where the statute gives an authority or jurisdiction to exercise discretion on certain objective factors, the exercise of such discretion has to be manifest, so that it can be gathered whether the discretion has been properly exercised or not."

(VII) Hon'ble Madhya Pradesh High Court judgment in the case of Milan Supari Stores v. Asstt.Commissioner of Sales Tax & Ors.[9]

"…….. The expression like 'may' in section 19(1) of the Act is indicative of discretion of the taxing authority. Lord Mansfield, in John Wilke's case (1770) 4 Burr 2528, stated in classic terms that discretion meant sound discretion, not whimsical or arbitrary one, guided by law and governed by rules."

(VIII) Hon'ble West Bengal Taxation Tribunal judgment in K. B. Engineers Pvt.Ltd. v. Addl.Commissioner, Com.Taxes, West Bengal & Anr.[10]

"While we agree with Shri Goswami that the power in question is discretionary, it cannot be missed to note that such discretion is not synonymous with caprice and such discretion should be exercised regard being had to the provisions of law and principles of natural justice."

(IX) Hon'ble Allahabad High Court judgment in the case of Prem Chand Suresh Chand v. Sales Tax Tribunal[11]

"It is well-established that when an authority or court arrives at a decision by considering material which is irrelevant to the enquiry,

or taking into account the matters which are partly relevant and partly irrelevant to be question for consideration, then in such a situation the decision as a whole is vitiated for it is impossible to say as to what extent the mind of the court or authority was affected by the irrelevant considerations."

Guidelines :

Tax :

(i) As is well known, the Hon'ble Supreme Court in its judgment in the case of Pratibha Processors & Ors. v. UOI & Ors.[12] observed :-

"13. In fiscal Statutes, the import of the words – "tax", "interest", "penalty", etc. are well known. They are different concepts. Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law."

(ii) The Hon'ble Supreme Court in its judgment in the case of CIT, Bangalore v. J. H. Gotla[13] observed as under :-

"Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction."

(iii) Hon'ble Supreme Court judgment in the case of CIT, W.Bengal-I v. Vegetable Products Ltd.[14]

"If the court finds that the language of a taxing provision is ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the assessee, more particularly so where the provision relates to the imposition of a penalty."

Penalty :

(a) Hon'ble Supreme Court judgment in the case of Hindustan Steel Ltd. v. The State of Orissa[15]

"……..But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of

law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

(b) Hon'ble Supreme court judgment in the case of Pratibha Processors & Ors. v. UOI & Ors.[12]

"*Penalty is ordinarily levied on assessee for some contumacious conduct or for a deliberate violation of the provisions of the particular statute."*

(c) Hon'ble Kerala High Court judgment in the case of St. Michael Oil Mills v. State of Kerala[16]

"The maximum penalty leviable under section 28(8) of the Kerala General Sales Tax Act, 1963 is 50 per cent of the value of the unaccounted stock. However, the mere fact that section 28(8) of the Act permits levy of 50 per cent of the value of unaccounted stock, does not mean that the officer imposing penalty can impose the maximum amount in all cases. He has first to be satisfied whether, on the facts and circumstances of any case, penalty is exigible, and if so, what quantum should be levied. The order levying penalty should show that both these aspects were borne in mind while levying the penalty.

Penalty proceedings are quasi-criminal in nature and in imposing penalty under section 28(8), the officer has to act judicially and not arbitrarily or mechanically."

(d) Hon'ble Supreme Court judgment in the case of State of Madhya Pradesh & Ors. v. Bharat Heavy Electricals[17]

"Where maximum penalty equal to ten times the amount of entry tax was prescribed in the statute, held that the assessing authority were not bound to levy a fixed penalty equal to ten times the amount of entry tax, whenever the provisions of taxing section 7(5) were attracted. Depending on the facts of each case the assessing

authority had to decide what would be the reasonable amount of penalty to be imposed, the maximum being ten times the amount of the entry tax."

Further in para 11 of the judgment the Hon'ble court has held :-

"In order to determine whether the aforesaid words "shall be presumed" occurring in section 28-B were rebuttable or not this Court in Sodhi Transport Co. v. State of U.P. [1986] 62 STC 361; [1986] 1 SCR 939 referred to section 4 of the Indian Evidence Act and then observed at page 389 of STC (953 of SCR) as follows:

"……. These words, i.e., 'shall presume' are being used in Indian judicial lore for over a century to convey that they lay down a rebuttable presumption in respect of matters with reference to which they are used and we should expect that the U.P. Legislature also has used them in the same sense in which Indian courts have understood them over a long period and not as laying down a rule of conclusive proof. In fact these presumptions are not peculiar to the Indian Evidence Act. They are generally used wherever facts are to be ascertained by a judicial process."

Interest :

Hon'ble Supreme Court judgment in the case of Pratibha Processors & Ors. v. UOI & Ors.[12]

"Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty – which is penal in character."

A Few Decided Cases :

1. Delhi High Court judgment in the case of Devsons Pvt. Ltd. v. CIT & Ors.[18], held

"We find no substance in the aforesaid contention as it is well settled that though assessment and penalty proceedings are distinct, and the findings recorded in the assessment proceedings may constitute evidence in the course of penalty proceedings, but they cannot be regarded as conclusive. This is the law enunciated by the Supreme Court in the following cases :-

a) *CIT v. Anwar Ali (1970) 76 ITR 696 (SC)*

b) *CIT v. Khoday Eswarsa and Sons (1972) 83 ITR 369 (SC); and*

c) *Anantharam Veeasinghaiah and Co. v. CIT (1980) 123 ITR 457(SC)*

2. Orissa High Court judgment in the case of Orient Paper Mills v. State of Orissa[19]

> "It is well settled that if a person is fastened with penalty by a quasi-judicial authority, the person proceeded against must be informed clearly of the provision which he has violated."

3. Supreme Court judgment in the case of Electro Optics (P) Ltd. v. State of Tamilnadu[20]

> "Sales tax – Penalty – Filing of incorrect returns – Dispute relating to classification of goods – Submission of return by delaer classifying goods under particular entry on account of bona fide belief in correctness of its stand – Does not amount to filing of incorrect returns attracting penalty"

4. Supreme Court judgment in the case of CIT v. Reliance Petroproducts Pvt.Ltd.[21]

> "Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty u/s. 271 (1) (c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

5. Rajasthan High Court judgment in the case of CTO, Anti-evasion , Jaipur v. Bambino Agro Industries Ltd.[22], applying the principle laid down by the Hon'ble Supreme Court in its judgment reported (2009) 23 VST 249 and Rajasthan High Court judgments reported (2013) 60 VST 141 and (2015) 78 VST 75, held

> "VAT – Penalty – Evasion of Tax – Rate of Tax – Manufacturer of sewai (vermicelli) macroni and pasta – Finding by authorized officers during survey operation that tax paid at four per cent only as against 12.5 per cent – All transactions stood recorded and

disclosed - Finding of fact that issue about rate of tax debatable - Manufacturer not guilty of concealing any material information or furnishing inaccurate particulars with intention to evade tax – Penalty not warranted."

6. Supreme Court judgment in the case of Dilip N. Shroff v. Jt. CIT & Anr.[23]

"Penalty – Imposition not automatic – Is a matter of discretion – Assessing officer has to be fair and objective – Income-Tax Act 1961, s.271(1)(c)

7. Kerala High court judgment in the case of Sangeetha Ready Made World v. State of Kerala[24] held

"No penalty can be imposed under section 21 A of the Kerala General sales Tax Act for the technical omissions such as variation in the address, absence of R.C. no., the Invoice etc. particularly when the consignee has properly accounted the transaction and there is not scope for evasion of tax."

8. Delhi High Court judgment in the case of Indian Railways Catering and Tourism Corporation Ltd. v. Govt. of NCT of Delhi & Ors.[25] held

"We feel that the petitioner ought to have been given an opportunity of hearing before the penalty orders could have been passed."

9. Delhi High Court judgment in the case of Bansal Dye Chem Pvt. Ltd. v. Commissioner, VAT & Anr.[26]

"VAT – Penalty – Proceedings distinct from proceedings for assessment to tax – Separate notice to dealer must be given."

10. Supreme Court judgment in the case of CIT, Central Calcutta v. National Taj Traders[27]

"The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions."

11. Madras High Court judgment in the case of Sterlite Industries (India) Ltd. v. CTO, Tuticorin III Assess.Circle[28] held

"Condition for levy of penalty – Dealer must be given opportunity of personal hearing."

12. Bombay High Court in the case of CIT v. Samson Perinchery[29]

"Penalty – Concealment of Income – Furnishing of incorrect particulars of income – Assessing officer initiating penalty proceedings for concealment of income – Order imposing penalty to be made only on ground on which penalty proceedings initiated and not on fresh ground of which assessee had no notice – Penalty to be deleted."

13. Punjab & Haryana High Court in the case of Prin.Comm.of I.Tax v. Rana Sugar Ltd.[30]

"Penalty – Concealment of income or furnishing inaccurate particulars of income – Disallowance of claims to deduction – Claim of assessee not found to be mala fide – No error in cancelling penalty imposed."

14. Orissa High Court judgment in the case of N. N. Soor v. State of Orissa[31]

"In making an assessment, the assessing officer is not deprived from relying on private sources of information which sources need not be disclosed to the assessee at all. In case he proposes to use against the assessee the result of any private enquiry made by him, he must communicate to the assessee the substance of any information so proposed to be utilized to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and to further give him ample opportunity to meet it if possible."

15. Patna High Court judgment in the case of Indian Oil Corporation Ltd. v. State of Bihar & Ors.[32]

"Held, allowing the petition, that the penalty ordinarily will not be imposed unless the party under obligation to pay tax has acted dishonestly in conscious disregard to obligation or is guilty of contumacious conduct. In the case of the petitioner the materials available in record show that imposition of penalty would not be justified. No ingredient of mens rea was found on the part of the petitioner and the delay in payment of tax cannot be said to be deliberate. Therefore the order imposing penalty is unsustainable in law."

Conclusion :

Bombay High Court judgment in Anand Issar Das Motiani & Ors. v. Virji Raid[33]

> "Now, we must say that fairness is all fundamental to justice. Fairness at the beginning, fairness during the proceedings and fairness at the conclusion of a judicial proceeding is the sine qua non of judicial administration. Justice infact is another name of fairness."

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1. (1976) 105 ITR 212
2. Rajesh Kr.& Ors.v. Dy.Comm.I.Tax & Ors. 2007 (2) SCC 181
3. AIR 1975 SC 550 – 557
4. (2000) 120 STC 377 – 378
5. (1977) 109 ITR 177 -185
6. (1997) 106 STC 185 – 186, para 5
7. (1969) 72 ITR 73
8. (1984) 150 ITR 513
9. (1993) 95 STC 165 – 168, para 13
10. (1997) 107 STC 113 – 116
11. (1992) 84 STC 214 – 217
12. AIR 1997 SC 138 – 143, para 13
13. (1973) 88 ITR 192
14. (1985) 156 ITR 323 – 324
15. (1970) 25 STC 211
16. (1988) 68 STC 360
17. (1997) 106 STC 604
18. (2010) 329 ITR 483 – 501
19. (2007) 10 VST 547 – 549
20. (2016) 89 VST 156 (SC) – Head notes
21. (2010) 322 ITR 158 (SC)
22. (2016) 90 VST 22 – Head notes
23. (2007) 291 ITR 519 – Head notes
24. (2008-09) 47 DSTC J-105
25. (2010) 48 DSTC J-316
26. (2016) 87 VST 58 – Head notes
27. (1980) 121 ITR 535 – 536
28. (2012) 51 VST 48
29. (2017) 392 VST 4 – Head notes
30. (2016) 386 ITR 316 – Head notes
31. (1964) 15 STC 872
32. (2009) 20 VST 25
33. AIR 1984 (Bom.) 39 – 45 (para 17)

GST on Capital Goods

By Parveen Kumar Mahajan, Advocate

Meaning of Capital Goods

According to section 2(19) of the CGST Act Capital Goods means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

A. Input Tax Credit on Capital Goods

To avail input tax credit for the Capital Goods the following conditions, in addition to conditions as stated under section 16(2)of the CGST Act, are to be fulfilled.

1. The Capital Goods has been capitalised in books of account of the person and
2. The Capital Goods are used or intended to be used in the course or furtherance of business.
3. **The conditions as stated under section 16(2)** of the CGST Act are as under:
   - 3.1 The registered person is in possession of Tax Invoice;
   - 3.2 The registered person has received Capital Goods;
   - 3.3 The tax charged on such capital goods has been paidand
   - 3.4 The GST Return has been filed in regard of such of Capital Goods
4. **The further condition as stated in section 16(3) is that** where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

5. **Blocked Input Tax Credit** – Input Tax Credit is blocked on Motor Vehicles, Vessels and Aircrafts subject to exceptions as per section 17(5) of the CGST Act.

6. **Total amount of Input Tax Credit** is allowed on purchase of capital goods. It is not like with provisions of VAT, Service Tax etc. where input Tax Credit was allowed in instalments year wise.

B. Treatment of Availed Input Tax Credit on Sale of CapitalGoods

In case of supply of used Capital Goods on which input tax credit has been availed, we should consider provisions of section 18(6) of the CGST Act read with rule 44(6). The higher amount of tax shall be paid out of tax charged on transaction value or pro rata input tax credit pertaining to unused period. The following example would help for more clarification in regard of this matter.

For example capital goods purchased worth Rs. 100000/= in the month of July 2017 and input tax credit @ 18% i.e. Rs. 18000/= paid and availed in the month of July 2017. This capital goods has been sold out in the month of August 2019. The person has used this capital goods from July 2017 to August 2019 i.e. for 26 months.

Useful Life of the Capital Goods is 5 years according to Rule 44(1)(b) i.e. 60 months

Remaining unused life of the Capital Goods is 34 months (60-26).

The Capital Goods has been sold for Rs.60000/= and tax charged Rs.10800/=.

Total Input Tax Availed	=	Rs.18000/-
Useful Life of the Capital Goods	=	60 months
Period of Capital Goods Used	=	26 months
Unused period of Capital Goods	=	34 months
Tax on Pro rata basis for unused period i.e. 34 months	=	Rs.10200/= (Total Input Tax Availed (18000)/Useful Life of the Capital Goods (60) * Unused period of Capital Goods (34))

Since the tax Rs. 10800/= charged on transaction value of the Capital Goods is more than the tax Rs. 10200/= calculated for unused period of the Capital Goods, therefore the higher amount of tax Rs.10800/= shall be paid.

In the above example if the supply of the Capital Goods is made for Rs.50000/= and tax Rs.9000/= be charged on this supply then higher amount of the tax Rs.10200/= calculated for unused period of the Capital Goods shall be paid.

C. Input Tax Credit not allowed on CapitalGoods

The Input Tax Credit is not allowed on Capital Goods on following circumstances:

1. If the Capital Goods are not capitalised in the books of account.
2. If the Capital Goods are purchased for non business purpose.
3. If the Capital Goods are purchased to be used exclusively for exempt supply.

D. Circumstances when availed Input Tax Credit against Capital Goods shall bepaid.

The Registered Person shall have to pay input tax credit against availed input tax against purchase of Capital Goods in following cases:

1. When the Registered Person shifts from regular registration to Composition Scheme and
2. When the Registered Person gets his registrationcancelled.

How much amount shall be paid we should consider section 18(4) of the CGST Act read with rule 44 in the case of shifting from Regular Registration to Composition Scheme and section 29(5) read with rule 44 in the case of cancellation of registration.

We can understand, how much amount shall be payable, through following example.

Useful Life of the Capital Goods is 5 years.

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month Input tax credit taken on such capital goods= C

Input tax credit attributable to remaining useful life = C multiplied by 5/60

Thus if the registered person availed input tax credit of Rs.18000/= then for remaining life of 5 months he shall have to pay Rs.1500/= (18000*5/60).

E. Reversal of Input Tax Credit as required under Rule 43(1) of the CGST Act

1. When the capital goods being partly used for taxable supply and partly used for exempted supply in that case input tax credit on such capital goods shall be reversed as much as it (common input tax credit) attributable to the exempted supply. We can understand this with following example:

Common Input Tax Credit of Capital Goods	= A
Total of Common Input Tax Credit of A	= Tc
Useful Life of Capital Goods	= 60 months
Input Tax Credit attributable to a tax period	= Tm
Calculation of Tm	= Tm =Tc/60
Input Tax Credit on all common capital goods i.e. total of Tm	= Tr = Tm+Tm+Tm+.....
Amount of common credit attributable towards the exempted supply	= Te
Calculation of Te	= (E/F) *Tr

Where

E = the aggregate value of exempt supply made during the tax period and

F = the total turnover in the state of the registered person during the tax period

S. No.	Tax Period	Total Turnover (F)	Exempted supply (E)	Opening Tr	Addition of Tm	Closing Tr	Te Reversal of Input Tax
1	Jul	100000	10000	6000	0	6000	600
2	Aug	120000	25000	6000	500	6500	1354
3	Sep	No Turnover	No Turnover	6500	0	6500	1354
4	Oct	200000	50000	6500	0	6500	1625

If there is no turnover during any tax period, reversal of input tax credit be taken as per previous tax period.

It is also informed about interest to be added to the amount of (Te). Rule 43(1)(h) of the CGST Act in this regard is reproduced “the amount Tealong with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.”

F. Change in use of Capital Goods

If the Capital Goods had been purchased for initially used for making taxable supply but later on the same Capital Goods was used for making both taxable and exempt supply and likewise if the Capital Goods had been purchased for initially used for making exempt supply but later on the same Capital Goods was used for making both taxable and exempt supply then how the reversal of input tax credit be done as per rule 43, is explained asunder:

In both cases we shall have to calculate value of A (common input tax credit) out of input tax credit paid and, availed or not availed, at the time of purchase.

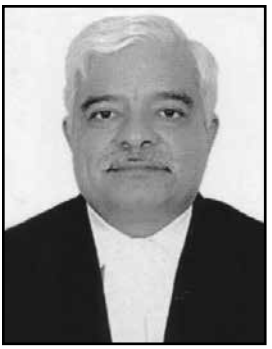
The value of ‘A’ shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof.

In second case the input tax credit was not availed at the time of purchase, the value of A shall be credited to the Electronic Credit Ledger also.

The example for this matter is that the person purchased capital goods in the month of July 2018 for Rs.100000/= to be used for making taxable supply and availed input tax credit of Rs.18000/= in the month of July 2018. In the month of Feb 2019 he has started use this capital goods for both taxable and exempt supply. Here he used capital goods for taxable supply from July 2018 to Jan 2019 for two and part of the third quarter. The provisions of Rule 43 say that “The value of ‘A’ shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof.” Thus value of A in this case shall be 15300/=18000– {(18000* 5%) * 3 }

After determined the value of A further calculations shall be done on same formula as stated above to calculate Tc, Tm, Tr and Te.

For any clarification, suggestion and rectification in regard of this write up you may do email. Email – pkmgstupdate@gmail.com



"HSN – Ramifications in GST Regime"

Sushil Verma, Advocate

1. The GST regime and the tax rate structure is pre-dominantly based on harmonious system of nomenclature which is followed world over. For the purpose of tax planning, the understanding of HSN & its process of interpretation is the key to GST law.

HSN stands for 'Harmonized System Nomenclature.' The WCO (World Customs Organization) developed it as a multipurpose international product nomenclature that first came into effect in 1988 with the vision of facilitating the classification of goods all over the World in a systematic manner.

HSN is a six-digit code that classifies more than 5000 products, arranged in a legal and logical structure. To achieve uniform classification, the HSN is supported by well-defined rules and is accepted worldwide. India, however, has 8 digits code.

HSN classification is widely used for taxation purposes by helping to identify the rate of tax applicable to a specific product in a country that is under review. It can also be used in calculations that involve claiming benefits.

Yet that's not all – it also applies to import and exports. The HSN code aids in determining the quantity of all items imported or traded through a nation.

HSN is used worldwide, with 200+ countries participating.

The Harmonized System of Nomenclature or HSN is an internal system of naming goods. GST HSN code is an 8-digit code assigned to goods by organizing them in a hierarchical manner. Service Accounting Code or SAC is the nomenclature adopted by the Goods and Services Tax Council for identifying services delivered under GST. These codes have been issued by Central Board of Excise and Customs (CBEC) for the uniform classification of all the services as each service has been assigned a unique SAC.

2. Indian GST and HSN Codes

Every person registered under GST is required to state HSN code in its invoice in respect of goods supplied by him. The below ones need to quote HSN/SAC under GST:

- Business with a turnover equal to or greater than 5 crore INR is supposed to quote a 4-digit HSN. Business with a turnover less than 1.5 crore INR does not require to quote HSN in the invoice.
- Business with a turnover between 1.5 crore INR and 5 crore INR is supposed to quote a 2-digit HSN.
- In case of exports, an 8-digit HSN is required to be quoted.
- During registration or migration, the business will have to quote HSN code for the goods.
- Small businesses under composition scheme do not need to quote HSN.

Under GST, all goods and services transacted in India are classified under the HSN code system or SAC Code system. Goods are classified under HSN Code and services are classified under SAC Code. Based on the HSN or SAC code, GST rates have been fixed in five slabs, namely NIL, 5%, 12%, 18% and 28%.

The current system of GST HSN codes adopted in India are uniform throughout the country and also in sync with the global classifications. This greatly reduces chances of errors made while doing inter-state trades as previously, every state had its own code for each product (for purchase and sale of the product).

3. A product is classified under sections, chapters, headings, and subheadings. For example, if you are selling fresh bananas, you can find your HSN code under Section 02: Vegetable Products, Chapter 08: Edible fruits and nuts; peel of citrus fruits or melons, Heading 03: Bananas including Plantains, Subheading 9010: Bananas, fresh. Your HSN code will be 0803. If you are exporting bananas, your HSN code will be 08 03 9010.

Understanding the HSN Code

The HSN structure contains 21 sections, with 99 Chapters, about 1,244 headings, and 5,224 subheadings

Adoption of HSN has brought India at par with rest of the countries of the world that are following the Harmonized System of Nomenclature after the introduction of GST. The HSN code is intended to make GST systematic and globally accepted.

It is expected to lead to harmonisation of customs and trade procedures. And hence, it leads to minimisation of the costs related to international trade.

Further, when HSN code is entered, the accounting or record keeping systems can automatically pick up the related tax rates of the commodities under the GST regime. This ecosystem hence simplifies the trade procedures. Hence, it is important to mention the correct HSN codes during enrolment or registration under GST. GST compliant accounting systems like Cygnet FACE or any other have the facility to pick up the related tax rates once the HSN summary is fed into the system.

Having correct HSN Code of a product is necessary in GST compliances, since giving HSN codes is a compulsory field to be filled while filing GST returns or uploading invoices.

HSN Code sections

Section 1	Chapter 1 to 5	It covers live animals and animal products.
Section 2	Chapter 6 to 14	It covers vegetable products.
Section 3	Chapter 15	It covers animal or vegetable fats and oils.
Section 4	Chapter 16 to 24	It covers beverages, spirits, vinegar, and tobacco.
Section 5	Chapter 25 to 27	It covers mineral products.
Section 6	Chapter 28 to 38	It covers chemical and para-chemical products.
Section 7	Chapter 39 to 40	It covers plastics and rubber.
Section 8	Chapter 41 to 43	It covers certain animal hides and skins.
Section 9	Chapter 44 to 46	It covers wood, cork, manufactures of straw, and articles.
Section 10	Chapter 47 to 49	It covers pulp of wood, paperboard, paper, and printed products.
Section 11	Chapter 50 to 63	It covers textiles and textile articles.
Section 12	Chapter 64 to 67	It covers footwear, headgear, walking sticks, umbrellas, artificial flowers, prepared feathers, and articles of human hair.

Section 13	Chapter 68 to 70	It covers articles made of minerals, plaster, stone, cement, etc., and ceramic and glass products.
Section 14	Chapter 71	It covers precious metals and stones.
Section 15	Chapter 72 to 83	It covers base metals and articles thereof.
Section 16	Chapter 84 to 85	It covers machinery and mechanical appliances, electrical equipment, sound recorders, and reproducers.
Section 17	Chapter 86 to 89	It covers aircraft, vessels, vehicles, and associated transport equipment
Section 18	Chapter 90 to 92	It covers optical, cinematographic, photographic, and musical apparatus and equipment; medical, measuring, surgical, and clocks and watches
Section 19	Chapter 93	It covers arms and ammunition.
Section 20	Chapter 94 to 96	It covers miscellaneous manufactured articles.
Section 21	Chapter 97 to 99	It covers collector's pieces, arts, and antiques.

4. **When you are looking to ship a product overseas, it is a legal requirement that you have a six digit HS code. This doesn't change whether you are shipping t-shirts or cars, every product must be assigned the HS code.**

The code is split into three groups of two, in what some refer to as the HS Code List:

The first two categorize the product, the second two define this classification further and the final set is to specify the product in more detail.

For instance, the first two digits may say that your product is clothing; the second two might say it is trousers and the final two might say it is men's blue trousers.

Classifying Products In The Harmonized System

Given the absolutely enormous number of products that must be classified under the HS, things can get a little confusing. Classification can be determined by a number of factors, including composition, form, and use.

Take potatoes for example. It would seem to be pretty straightforward, right? Nope. If the potatoes are fresh, they are classified with code 0701.90 under the header, "Potatoes, fresh or chilled."

Frozen potatoes, on the other hand, get the HS code of 0710.10 under the header, "Vegetables (uncooked or cooked by steaming or boiling in water) frozen" and then under the subheader of, "Potatoes."

See what we mean? The HS is very comprehensive but not always straightforward.

Or take picture frames. Wooden picture frames receive HS code 4414.00 ("Wooden frames for paintings, photographs, mirrors or similar objects"), while plastic frames receive code 3924.90 ("Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics. Other.").

Then there are live dogs, which falls under the "residual" heading 01.06 ("Other live animals") because it isn't covered under headings 01.01 – 01.05.

Essentially, every product you want to import or export must be given an HS code. Don't assume you have the correct code. Take the time to get it right.

The HS is organized logically by economic activity or component material. For example, animals and animal products are found in one section of the HS, while machinery and mechanical appliances are found in another. The HS is organized into 21 sections, which are subdivided into 99 chapters. The 99 HS chapters are further subdivided into 1,244 headings and 5224 subheadings.

The process of assigning HS codes is known as "HS Classification". All products can be classified in the HS by using the General Rules for the Interpretation of the Harmonized System ("GRI"). HS codes can be determined by a variety of factors including a product's composition, its form and its function. An example of a product classified according to its form would be whole potatoes. The classification will also change depending on whether the potatoes are fresh or frozen. Fresh potatoes are classified in position 0701.90, under the Header Potatoes, fresh or chilled, Sub header Other, while frozen potatoes are classified in position 0710.10 under the Header Vegetables (uncooked or cooked by steaming or boiling in water), frozen, Subheader Potatoes.

An example of a product classified according its material composition is a picture frame. Picture frames made of wood are classified under subheading 4414.00, which provides for Wooden frames for paintings, photographs, mirrors or similar objects. Picture frames made of plastic

are classified under subheading 3924.90, which provides for Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics. Other. Picture frames made of glass are classified under subheading 7020.00, which provides for Other articles of glass. And so on.

An example of a product classified according to its form is personal hygiene soap. When in the form of a bar, cake or moulded shape, such soap is classified under subheading 3401.11, which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, moulded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products). Conversely, liquid personal hygiene soap is classified under either 3401.20, which provides for Soap in other forms, or 3401.30, which provides for Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap.

An example of a product classified according to its function is a carbon monoxide (CO) detector. If the CO detector captures and displays gas measurements, then it is properly classified under subheading 9027.10, which provides for Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus; instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes. Gas or smoke analysis apparatus. If the CO detector does not capture and display gas measurements, then it is properly classified under subheading 8531.10, which provides for Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 85.12 or 85.30. Burglar or fire alarms and similar apparatus.

Although every product and every part of every product is classifiable in the HS, very few are explicitly described in the HS nomenclature. Any product for which there is no explicit description can be classified under a “residual” or “basket” heading or subheading, which provide for Other goods. Residual codes normally occur last in numerical order under their related headings and subheadings.

An example of a product classified under a residual heading is a live dog, which must be classified under heading 01.06, which provides for Other live animals because dogs are not covered by headings 01.01 through 01.05, which explicitly provide for live equine, live bovine, live swine, live sheep and goats, and live poultry, respectively.

5. The GST in India predominantly is based on the Harmonized System of Nomenclature (HSN), which is an internationally accepted product coding system formulated under the auspices of the General Agreement on Tariffs Trade (GATT). In Commissioner of Customs and Central Excise, Goa v. Phil Corporation Ltd. (2008) 17 SCC 569, this Court explained the HSN as under:-

> "29. ...The Central Excise Tariff Act is broadly based on the system of classification from the international convention called the Brussels 69 Convention on the Harmonized Commodity Description and Coding System (Harmonized System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human, hair, etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not"

HSN Explanatory Notes provide a commentary on the scope of each heading, giving a list of the main products included and excluded, together with technical description of the goods concerned (their appearance, properties, method of production and uses) and practical guidance for their identification. The Explanatory Notes also clarify the scope of particular sub-headings wherever appropriate. However, HSN or the Explanatory Notes thereon cannot supersede the relevant notes contained in the Tariff Schedule. They can be relied upon as a safe guide in cases of doubt.

In Collector of Central Excise, Shillong v. Woods Craft Product Ltd. (1995) 3 SCC 454, this Court held HSN is a safe guide for interpretation and entitled to great consideration. The relevant portion of the said judgment is as under:-

> "12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central excise tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central excise tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted,

> for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

In Collector of Central Excise, Hyderabad v. Fenoplast (P) Ltd. (II) : 1994 (72) ELT 513 (SC), a three-Judge Bench of this Court held that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts where the primary object is to raise revenue and for such purpose the various products and goods are classified, the common parlance test can be accepted, if any term or expression is not properly defined in the Act ‹if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted'.

However, in Camlin Ltd. v. Commissioner of Central Excise, Mumbai (2008) 9 SCC 82, this Court held that if the entries under HSN and the entries under the Central Excise Tariff Act are different then reliance cannot be placed upon HSN Notes for the purposes of classification of goods under the Central Excise Tariff Act. The relevant portion of the said judgment is as under:-

> "24. In our considered view, the Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them under Chapter Sub-Heading 3215.90 of the said Tariff. The Tribunal failed to appreciate that the entries under the HSN and the entries under the said Tariff are completely different. As mentioned above, it is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. One of the factors on which the Tribunal based its conclusion is the entries in the HSN. The said conclusion in the order of the Tribunal is, therefore, vitiated and, accordingly, set aside. We agree with the findings recorded by the Commissioner (Appeals).

6. A taxing statute is being one levying a tax on goods must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. In Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh, AIR 1967 SC 1454, it was held as under:-

"5. The result emerging from these decisions is that while construing the word "coal" in Entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal".

It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

After referring to various judgments on the point of common parlance test, in Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant Private Ltd., New Delhi (2012) 13 SCC 639, it was held as under:-

"33. Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding."

48. In the case of Alpine Industries v. Collector of Central Excise, New Delhi (2003) 3 SCC 111, the question was whether "Lip Salve" could be 66 classifiable as a preparation for care of skin or as a medicament. The product was mainly supplied to the Defence Department for use by military personnel who are posted in high-

altitude areas. In Commissioner of Central Excise, Calcutta v. Sharma Chemical Works (2003) 5 SCC 60, this Court held that in interpreting provisions of a statute like the Excise Act, the popular meaning as understood by the users should be applied and not the scientific or technical meaning.

7. Disputes with regard to classification may arise in different situations and circumstances. Whether a particular item/product would fall under one or the other Chapter/Heading of a Chapter is one such situation. A dispute may also arise on a claim that though the item falls within a particular Heading, owing to multifarious reasons, some part of the same item may fall under another Heading of the same Chapter or a different Chapter altogether. All disputes with regard to classification of goods manufactured and cleared has to be primarily decided and resolved within the frame work of the Act and on the basis of Rules for Interpretation and the various Chapter Notes and Supplementary Notes contained in the Tariff Act.

The understanding of the CBEC and other authorities exercising jurisdiction under the CGST Act in respect of the Rules for Interpretation and the Chapter Notes, as may be reflected in the Circulars/Memos issued from time to time, can be an useful aid in understanding and resolving disputed issues of classification. The Harmonised System of Nomenclature (HSN) and the Chapter Notes and Explanatory Notes thereto, on which the GST law has been modelled by the Parliament and accepted by States, has been repeatedly acknowledged by the Supreme Court to be a safe guide for resolution of disputes with regard to classification under the tax laws based on and accepting HSN. The opinions rendered by the Supreme Court in Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd. (1995) 3 SCC 454 ; Commissioner of Customs and Central Excise, Goa Vs. Phil Corporation Limited(2008) 17 SCC 569 ; O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhl, Gurgaon (2005) 2 SCC 460 may be illustratively referred to in this regard. These are the different tools that would be available to the Court to deal with disputes with regard to classification which must be resorted to in the first instance.

8. Tests for Classification: The Supreme Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. Whether a particular article will fall within a particular tariff heading or not, has to be decided on the basis of as to how that article is understood in ‘common parlance’ or in ‘commercial world’ and not as per

scientific or technical meaning. In the case of Asian Paints India Ltd. v. Collector of Central Excise (1988) 2 SCC 470, it has been held that when definition of a word has not been given, it must be considered in its popular sense and not according to scientific or technical sense.

After referring to various judgments, in Plasmac Machine Manufacturing Co. (P) Ltd. v. Collector of Central Excise, Bombay 1991 Supp (1) SCC 57, it was held by this Court as under:-

> "15. ..... It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. Indo International Industries v. CST ((1981) 2 SCC 528 and Dunlop India Ltd. v. Union of India (1976) 2 SCC 241 have settled this proposition. How is the product identified by the class or section of people dealing with or using the product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in Atul Glass Industries (Pvt.) Ltd. v. CCE (1986) 3 SCC 480 and Indian Aluminium Cables Ltd. v. Union of India (1985) 3 SCC 284. In Asian Paints India Ltd. v. CCE (1988) 2 SCC 470 which was a case of emulsion paint, at para 8 it was said: (SCC p. 473, para 8)

It is well settled that the commercial meaning has to be given to the expressions in tariff . Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it.""

In Dabur Industries Ltd. v. Commissioner of Central Excise, Jamshedpur (2005) 4 SCC 9, it was held that in classifying a product, the scientific or technical meaning is not to be resorted to but the test was to see what the persons using the product understand it to be.

39. In Commissioner of Central Excise v. Wockhardt Life Sciences Limited (2012) 5 SCC 585, this Court emphasized "Common Parlance Test" or the "Commercial Usage Test" in paras (33) to (37) and held as under:-

> "33. There is no fixed test for classification of a taxable commodity. This is probably the reason why the "common parlance test" or the "commercial usage test" are the most common (see A. Nagaraju

> Bros. v. State of A.P. 1994 Supp (3) SCC 122). Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in "common parlance" or in "commercial world" or in "trade circle" or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted (see Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan (1980) 4 SCC 71).

Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance. [See O.K. Play (India) Ltd. v. CCE (2005) 2 SCC 460, Alpine Industries v. CCE (2003) 3 SCC 111, Sujanil Chemo Industries v. CCE & Customs (2005) 4 SCC 189, ICPA Health Products (P) Ltd. v. CCE (2004) 4 SCC 481, Puma Ayurvedic Herbal (2006) 3 SCC 266, Ishaan Research Lab (P) Ltd. (2008) 13 SCC 349 and CCE v. Uni Products India Ltd. (2009) 9 SCC 295]

A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense (see Akbar Badrudin Giwani v. Collector of Customs (1990) 2 SCC 203 and Commr. of Customs v. G.C. Jain (2011) 12 SCC 713). A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former [see CCE v. Jayant Oil Mills (P) Ltd. (1989) 3 SCC 343, HPL Chemicals Ltd. v. CCE (2006) 5 SCC 208, Western India Plywoods Ltd. v. Collector of Customs (2005) 12 SCC 731 and CCE v. Carrier Aircon Ltd. (2006) 5 SCC 596].

In Commissioner of Central Excise, Delhi v. Carrier Aircon Ltd. (2006) 5 SCC 596, this Court held as under:-

> "14. End use to which the product is put to by itself cannot be determinative of the classification of the product. See Indian Aluminium Cables Ltd. v. Union of India (1985) 3 SCC 284. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors inter alia are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (produced), the end use to which the product is put to, cannot determine the classification of that product."

9. Where the product is described in HSN it draws its meaning from the entries enumerated in those chapters etc; but where the product is not well defined, still the interpretation based on common parlance will have to be harmonized. And there will be plenty of such real time examples as we proceed with understanding the GST.

In Indo International Industries vs. Commissioner of Sales Tax, U.P 1981 (8) E.L.T. 325 (S.C.)where the the common parlance test was adopted to resolve the dispute of classification this Court was dealing with the question as to whether hypodermic clinical syringes could be regarded as "glass ware" under Entry No.39 of the First Schedule to the U.P. Sales Tax Act, 1948.

Similarly, in Asian Paints India Ltd. vs. Collector of Central Excise1988 (35) E.L.T. 3 (S.C.) the question before this Court was whether "Decoplast" manufactured by the Asian Paints India Ltd. was classifiable under Tariff Item No. 14(1)(3)(iv) of the First Schedule of the Central Excise Tariff as "plastic emulsion paint" or under Tariff Item No.14(1)(v) as "paints not otherwise specified".

In Shree Baidyanath Ayurved Bhavan Ltd. vs. Collector of Central Excise, Nagpur 1996) 9 SCC 402the issue before this Court was as to whether Dant Manjan Lal manufactured by the Assessee was medicine so as to be covered by Exemption Notification No.62/78CE dated 1st March, 1978 or a toilet preparation.

18. In Alpine Industries vs. Collector of Central Excise, New Delhi (2003) 3 SCC 111 the question that arose for consideration before this Court was whether "Lip Salve" is classifiable under Heading 33.04 of the Central Excise Tariff Act, 1985 as "a preparation for care of skin" or whether as a "medicament" under Heading 30.03 thereof.

10. Where the legislative intention to depart from the HSN is clear and unambiguous the HSN can be ignored. Illustratively, the HSN would not permit the Court to import an entry mentioned in the HSN but not in the Schedules to the Act. The same principle will however not apply to the Chapter notes and the Explanatory notes which tools for understanding the Entries/Headings are.

Tariff Item under eight digit system would be interpreted as under:-

First two digit	refer to the Chapter Number of the Tariff
Next two digits	refer to heading of the goods in that Chapter)
Next two digits	indicate Chapter sub-heading
Last two digits	refer to the chapter sub-sub-heading

11. Classification Procedure

In brief the supplier shall identify the correct classification of the goods as per the notifications issued under GST law and ascertain the rate of tax which is payable. The goods have to be primarily classified as per the description of the goods specified therein and next as per the trade or commercial understanding of the product. Understand the global scenario and then the Indian scenario of that business or activity, the alternative methods or variants, the domain knowledge of the transaction. The steps involved for classification of goods are as follows. The first step is to find out the classification heading based on the description and nature of the goods being supplied as per the notified rate schedule. The Section Notes and Chapter Notes to the Schedule to be read. If there is no ambiguity, the classification is final and there is no need to apply the non-statutory principles of classifications set out in commentary section above.

If there is ambiguity, first reference shall be made to the Rules for interpretation of the Customs Tariff. Find the trade understanding of the terms used in the Schedule, if the meaning is not clear. If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding. If none of the above are available reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use. In case of the unfinished or incomplete goods, ascertain if the unfinished product has the essential characteristics of the finished product, if yes, apply that classification to the unfinished product. If the classification is not ascertained as per point (e) mentioned above, find out the heading, which is more specific to the nature of product. If the classification is still elusive, ascertain which material gives the article its essential characteristics and use that classification. While doing so, consideration as to the following non-statutory principles can also applied for classification, however it should be understood that statutory principles shall have precedence over non-statutory principles. Find the trade understanding of the terms if the meaning is not clear. If the trade understanding is not available, the next step is to refer to the technical or scientific meaning. However if the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding. If none of the above is available, reference may be made to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.

Once the goods are appropriately classified, then examine whether any exemption or concessional notification exists. Here care is to be taken to

ensure conditions if any are complied with/compliable in full or substantially. It is suggested to classify and to declare all the goods supplied including by-products, intermediate products, stock transfers, job work, waste and scrap, if any generated during the manufacturing process. (Exempted items are also to be declared as an additional disclosure as a measure of caution) The supplier should as far as possible, provide the description of the goods as it is to be invoiced or as it is understood in the market (including brand name, if any). It would be advisable to enclose trade literature. The HSN description need not be reproduced. For example, the spindle assembly is basically a part of wiper for cars. Instead of declaring the same as 'Parts of Wiper', declare the same as 'Spindle Assembly for Wipers of Cars.' It is possible that the rate arrived at is higher than what others in organized/unorganized trade/industry are using.

The following steps may be followed while classifying the services; The first step is to determine and confirm whether it is a supply of service. If more than one item viz. goods and/or services are being supplied together, determine whether it is a composite supply or mixed supply. In case of composite supply, identify the principal supply and decide whether it is supply of goods or supply of service. Verify whether it is a mixed supply. Identify the different supplies in the mixed supply and classify all the supplies involved. Refer to Schedule II to the CGST Act, 2017 to confirm whether the supply is a deemed service. Refer the exemption Notification No. 12/2017-Cental Tax (Rate), dated 28.06.2017, to decide whether a particular service is exempt or not. The classification under HSN is irrelevant in deciding the exemption since the exemption is based on the description of the service and not on the basis of classification under HSN. Nonetheless, the classification of exempt service is required to be mentioned in the invoice, returns and records. Find out the classification heading based on the description and nature of the service being supplied in the notification 11/2017-Central Tax (Rate) dated 28/6/2017 - amended time to time and determine the four digit classification heading. Determine the rate of GST by referring to the said relevant notification. Further CBEC has released mobile application for determining the classification of goods and/services called as 'GST Rate finder' which could be used for indications but may not be conclusive.

12. Process of Classification

The General Interpretative Rules (GIR) provide a step-by-step basis for the classification of goods and ensure uniform interpretation of the Harmonized System (HS) nomenclature.

In every case, the goods must first be classified in the appropriate 4-digit HS heading, followed by the appropriate 1-dash subheading, and

the appropriate 2-dash subheading and so on. You should not proceed directly to the lower-level subheadings without first determining the appropriate heading.

Step 1: Understand the Product

Below is a list of questions which might assist you to understand the product better:

- What is the product? (Is it an animal product, vegetable product, chemical, foodstuff, beverage, article, machinery, textile, jewellery, equipment, vehicle, instrument, etc?)
- What is the function of the product? (You can request for an operating manual or product demonstration to understand more about the product function)
- Can the product function on its own? Is the product a part or component of another product?
- What is the manufacturing process of the product?
- What is the material of the product?
- What are the ingredients of the product?
- Is the product a pure chemical or mixture of different chemicals?

Step 2: Apply General Interpretative Rule 1

- Locate the HS Section where the product is likely to be classified in.

- Read the Section Notes that apply to the Section. If the product can possibly be classified in more than one Section, read the Section Notes for each section to identify the most appropriate Section.

- Once the appropriate Section is identified, locate the Chapter(s) in the section. Read the Chapter(s) Notes for the Chapter(s) identified.

- Identify the possible Heading(s) after reading all the Headings in the Chapter(s) you have identified. Read the Heading text very carefully to make sure that it fits the product. Re-check the Section and Chapter Notes to confirm that the product is not excluded, or not directed to another Heading.

Step 3: Apply General Interpretative Rules 2 to 5

- Note that Headings are mutually exclusive. A product can only be classified under one Heading. If you have more than one Heading under consideration, you will need to use GIR 3 to decide between them.

- Apply GIR 2 to 5, where appropriate, in sequential order.

Step 4: Apply General Interpretative Rule 6

- Once the Heading is selected, the product must be classified at the Subheading level. The Subheading can only include products which are included in the Heading to which they apply.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

The General Interpretative Rules (GIR) is a set of 6 rules for classifications of goods. The rules are provided to ensure uniform legal interpretation of the harmonized System Nomenclature for proper classification of goods. These rules have to be applied in sequential order.

Rule 1

The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

Examples:

– Section XV is entitled “Base metal sand articles of base metal” but jewellery of base metal is classified in Section XIV.

– Chapter 61 is entitled “Articles of apparel and clothing accessories, knitted or crocheted”, although the chapter also covers certain articles which are not wholly knitted or crocheted, such as those in heading 62.12.

– Live horses are classified in Heading 01.01.

Rule 2

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Examples:

– A car without wheels, is considered as a complete car.

– A complete set of wooden panels meant for assembly into a cupboard, is considered as a finished cupboard.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

Examples:

– Milk to which vitamins or minerals have been added.

– A pack of cornflakes which also contains a small amount of nuts and raisins.

Rule 3

When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Examples:

– Steel spoon is classified in Heading 82.15 and not in Heading 73.23.

– Seats for motor vehicles are classified in Heading 94.01 and not in Heading 87.08.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Examples:

– A mixture for brewing, consisting of 70 % wheat and 30 % barley. The mixture is classified in Heading 10.01 (Wheat and meslin).

– Liquor-filled chocolates are classified in Heading 18.06 (Chocolate and other food preparations containing cocoa).

– A bed linen set comprising a woven bedspread, pillow-cases and bolsters put up in a paperboard case. It is classified in Heading 63.04.

(c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Examples:

– A belt made of 50 % leather and 50 % textiles is classified in Heading 62.17.

– A machine-tool for working stone as well as wood is classified in Heading 84.65.

Rule 4

Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

Rule 5

In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of Rule 5(a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Rule 6

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter notes also apply, unless the context otherwise requires.

This article is in essence of a summary of understanding of HSN, interpretation of the chapters, headings, sub0headings and entries therein.

Before applying any tax rate on any entry, we have to be careful to see whether the GST law has adopted entire chapter or adopted a part of it or adopted entire 8 digit or 2 or 4 digits in a particular entry. Depending on what has GST law adopted, the product under question shall be examined to ensure whether the product strictly falls within the specified entry under GST law.

The more we practice HSN interpretation, the more we understand and advise our clients. All judgments of Supreme Court and High Courts and CESTET are applicable if they interpreted an entry which we are examining based on HSN. Even in HSN classification, there are grey areas where the principles laid down by Supreme Court in various judgments given in this article may have to be made applicable.

Notification regarding Filing of returns through digital signature

F.3(643)/Policy/VAT/2016/658-68 24-08-2016

Notification

In exercise of the powers conferred on me under Section 70 of Delhi Value Added Tax Act, 2004 and under rule 28 of the Delhi Value Added Tax Rules, 2005, I, S.S. Yadav, Commissioner, Value Added Tax, Government of NCT of Delhi, do hereby withdraw notifications No.F.3(643)/Policy/VAT/2016/1585-1597 dated 1st March,2016, and notifications No.F.3(643)/Policy/VAT/2016/419-431 dated 1st July,2016, regarding mandatory requirement of filing returns in Form DVAT 16 or in Form 17, as the case may be, with digital signatures.

This notification shall come into force with immediate effect.

S.S. Yadav
Commissioner, Value Added Tax

Circular regarding Framing of Central Assessments

F.3(636)/Policy/VAT/2016/1114-20 02-02-2017

Circular No. 22 of 2016-17

Sub : Framing of Central Assessments

The reconciliation return in CST form 9 relating to declaration of sales against statutory forms are required to be filed by all such dealers who had effected interstate sale against any statutory form like C,F,H, E-I, E-II ,I & J.

All the Assessing Authorities are hereby directed to complete the Form-9 assessment u/s 9(2) of t he CST Act, 1956 read with section 32 of the DVAT Act ,2004 for the year 2012-13 which will get time barred by the end of this financial year.

OHAs/SOHAs shall allow the objection/appeal, filed, if any, framed due to deficiency of forms only after ensuring that the forms under dispute have been filed online.

This issues with the approval Commissioner, Value Added Tax.

Anand Kumar Tiwari
Additional Commissioner (Policy)

Circular regarding Filing of online return for 3rd quarter of 2016-17 extension of period thereof upto 28-02-2017

F.3(420)/Policy/VAT/2011/PF/1159-64 13-02-2017

Circular No. 23 of 2016-17

Sub: Filing of online return for 3rd quarter of 2016·17 - extension of period thereof.

In partial modification to this department's Circular No. 21 of 2016-17 on the subject cited above and in exercise of the powers conferred under Rule 49A of the Delhi Value Added Tax Rules, 2005, I, H. Rajesh Prasad, Commissioner, Value Added Tax, do hereby extend the last date of filing of online/hard copy of third quarter return for the year 2016-17, in Form DVAT-16 ,DVAT-17 and DVAT-48 along with required annexure/enclosures to 28/02/2017.

However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004. The dealers filing the returns through digital signature need not file hard copy of the return/Form DVAT-56,

H. Rajesh Prasad
Commissioner, VAT

Circular regarding Grant of Registration under DVAT and CST

F.3(521)/Policy/VAT/2015/1200-1205 23-02-2017

Circular No. 24 of 2016-17

Subject:- Grant of on line Registration under DVAT and CST

In supersession to this department's Circular No 03 of 2015-16 Dated 27-04-2015, the online process to be adopted, henceforth, for grant of registration under DVAT and /or CST Act is hereby spelt out as under:

1. The applicant dealer, applying online, shall provide PAN details and other brief particulars including e-mail, mobile etc. to begin with.

2. PAN shall be verified from Income Tax data base, maintained by NSDL, on real time basis.

3. On successful PAN verification, user ID and password would be communicated to the applicant on the same day.

4. The applicant dealer can file registration application under DVAT and /or CST Act, as the case may be, and deposit fee online. Scanned requisite documents are also required to be uploaded with the application.

5. The application(s) would be made available in the login of concerned ward VATO for examination of application documents.

6. Consequent upon approval of the VATO concerned, the digitally signed Registration Certificate/TIN (downloadable at the dealer's end) will be granted preferably within one day to the prospective applicant dealer, (instead of 'Provisional Certificate' hitherto issued), for which no VATI verification at this stage shall be required.

7. The provision of providing Bank Account details, at the time of applying for registration under DVAT & CST Act, as envisaged in Form DVAT 04, Part (Column No 16) shall be optional ,on the part of the applicant dealer. However, the dealer shall have to provide Bank Account details of the business expeditiously on or before the filing of first Return, in r/o the registered entity.

This issues with the prior approval of the Commissioner, VAT.

Ranjeet Singh
Joint Commissioner (Policy)

Circular regarding Filing of online return for 3rd quarter of 2016-17 extension of period thereof upto 08-03-2017

F.3(420)/Policy/VAT/2011/PF/1213-16 28-02-2017

Circular No. 25 of 2016-17

Sub: Filing of online return for 3rd quarter of 2016·17 - extension of period thereof.

In partial modification to this department's Circular No. 23 of 2016-17 on the subject cited above and in exercise of the powers conferred under Rule 49A of the Delhi Value Added Tax Rules, 2005, I, H. Rajesh Prasad, Commissioner, Value Added Tax, do hereby extend the last date of filing of online/hard copy of third quarter return for the year 2016-17, in Form DVAT-16 ,DVAT-17 and DVAT-48 along with required annexure/enclosures to 08/03/2017.

However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004.

The dealers filing the returns through digital signature need not file hard copy of the return/Form DVAT-56.

H. Rajesh Prasad
Commissioner, VAT

Circular regarding Filing of online return for 3rd quarter of 2016-17 extension of period thereof upto 17-03-2017

F.3(420)/Policy/VAT/2011/PF/1243-48 08-03-2017

Circular No. 26 of 2016-17

Sub: Filing of online return for 3rd quarter of 2016·17 - extension of period thereof.

In partial modification to this department's Circular No. 25 of 2016-17 on the subject cited above and in exercise of the powers conferred under Rule 49A of the Delhi Value Added Tax Rules, 2005, I, H. Rajesh Prasad, Commissioner, Value Added Tax, do hereby extend the last date of filing of online/hard copy of third quarter return for the year 2016-17, in Form DVAT-16 ,DVAT-17 and DVAT-48 along with required annexure/enclosures to 17.03.2017.

However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004. The dealers filing the returns through digital signature need not file hard copy of the return/Form DVAT-56.

H. Rajesh Prasad
Commissioner, VAT

Circular regarding De-sealing of Business Premises

F.3(645)/Policy/VAT/2016/1249-54 08-03-2017

Circular No. 27 of 2016-17

Subject:- De-sealing of Business Premises

In line with the directions of Hon'ble High Court Delhi, in the matter of Sh. Narender Singh Vs. Deptt. of T&T (in WP(C) 1627 j20 17), the following procedure is required to be adopted for de-sealing of the business premises, which are sealed in the event of Enforcement Survey etc. by the officers of the Department of Trade & Taxes:-

(i) If the Dealer concerned whose business premise has been sealed does not turn up for de-sealing of the same within a reasonable time, then he should be intimated through a notice, at his last known address, regarding De-sealing process to be undertaken. Even then, if the dealer concerned does not turn up with the request for de-sealing, the department will publicize the same in the leading newspaper for the intimation of the dealer and all concerned. If the dealer still does not turn up with the request for de-sealing/ or the landlord requests for getting the sealed premises vacated, the department may go on to de-seal the said premise.

(ii) The process of de-sealing should be conducted in the presence of two independent witnesses and one of them should be area SDM/executive Magistrate. The inventory of the goods seized, lying inside the premises, should be prepared in the presence of these witnesses and to be duly signed by them. The entire process should be Videographed.

(iii) Consequent upon de-sealing of the premises, the Goods seized should be kept in the custody of malkhanas of concerned Revenue District, for want of sufficient infrastructure in VAT department.

(iv) The Landlord requesting for de-sealing should be asked to furnish an indemnity bond and affidavit to the department.

(v) After assessment of the dealer, if he fails to pay the due liability of tax, interest and penalty, the process for recovery of Govt dues including disposal of such seized goods shall be carried out as per the relevant provisions of DVAT Act and rules made thereunder.

This issues with the prior approval of the Commissioner, VAT.

Ranjeet Singh
Joint Commissioner (Policy)

Circular regarding Filing of online return for 3rd quarter of 2016-17 extension of period thereof upto 31-03-2017

F.3(420)/Policy/VAT/2011/PF/288-93 17-03-2017

Circular No. 28 of 2016-17

Sub: Filing of online return for 3rd quarter of 2016-17 — extension of period thereof.

In partial modification to this department's Circular No. 26 of 2016-17 on the subject cited above and in exercise of the powers conferred under Rule 49A of the Delhi Value Added Tax Rules, 2005, I, H. Rajesh Prasad,

Commissioner, Value Added Tax, do hereby extend the last date of filing of online/hard copy of third quarter return for the year 2016-17, in Form DVAT-16 ,DVAT-17 and DVAT-48 along with required annexure/enclosures to 31.03.2017.

However, the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act, 2004. The dealers filing the returns through digital signature need not file hard copy return/Form DVAT-56.

H. Rajesh Prasad
Commissioner, VAT

Circular regarding Guidelines relating to downloading of Statutory Forms

F.3(750)/Policy/VAT/2017/04-10 03-04-2017

Circular No. 1 of 2017-18

SUB: Guidelines relating to downloading of Statutory Forms

It has been observed , of late, that some of the dealers esp. a majority of those who have been granted Registration Certificate provisionally i.e. whose credentials are yet to be fully established, are found engaged in downloading of higher amount of Statutory Forms by showing inter-state transactions. This is happening despite availability of a variety of checks and legal recourses, for the purpose of restraining such unscrupulous dealers from illegal downloading of statutory forms , nothing much seems to have been done on the ground.

Thus, in the best interest of the Department, it is considered appropriate to resort to a more pragmatic approach, to thwart any likelihood of such nefarious designs. All the officers, therefore, as reminded from time to time , shall strictly follow the Procedure laid down herein for allowing downloading of statutory Forms to the following class(es) of dealers :-

1) Those who have been granted Provisional Registration Certificate only.

2) Registered dealers who have been granted (Final) Registration Certificate after 01.04.2015.

3) All the above class(es) of dealers who have reflected High OTO and NIL/Negligible tax.

4) Dealers whose details in Form DVAT 04 (Parts A, B, C &, D) are not filled properly including Unique Identification (AADHAAR) No.

5) Already registered dealers who have not provided the Bank Account details or have punched in fictitious digits (0000 or NIL etc.) in the column of Bank Accounts.

6) Dealers, who have made frequent changes in DP-I and/or whose credentials, prima-facie , appear questionable.

7) Those dealers who frequently resort to revise returns.

Dealers falling in all or any of the above class(es) shall be barred from automatically downloading the statutory form(s) by the Ward In charge concerned by blocking/putting a check through the front end in the System.

The online permission for downloading the statutory form(s) may be granted by the Ward In charge concerned through the link available to them at the front end, to such blocked dealers who apply online and whose credentials are duly verified by the Ward Incharge/officer concerned.

Further, upon receiving an SMS/e-mail alerts by the VATOs regarding the statutory forms downloaded, in excess of Rs. 10 Lakhs, by the above class(es) of dealers or the ones who are found to be involved in suspicious transactions, there should be a daily reporting concerning such transactions/ dealers, to Zonal In charge concerned.

Furthermore, there must be an immediate blocking of the TIN of the dealer by the very next day, by VATO/Ward In charge, to be followed by a physical inspection of the firm by the VATI, as well as, an issue of notice u /s 59(2) of the DVAT Act, 2004 by the VATO concerned, directing the dealer to produce, within a period of 15 days, the requisite documents, to substantiate the transactions/purchase, that related to the form(s) downloaded.

If the dealer fails to reply/respond within the time stipulated, the process should be initiated for declaring the Statutory forms obsolete and invalid, invoking the relevant provisions of the Statute/law and a notice to the effect be duly issued/served on the dealer in the manner envisaged. in the law. The respective State authorities shall also be informed of the action taken.

If the dealer is not found functioning/ existing at the given address, a Show Cause Notice may be issued/served forthwith, in Form DVAT 10,

thereby affording the dealer an opportunity of being heard. If no response is forthcoming or reply received is not to the satisfaction of the VATO, then Form DVAT 11 may be issued / served , cancelling the registration of the dealer as well as initiating the other possible actions towards recovery of any amount of tax, interest, penalty and other amounts due.

All the ACs/VATOs/AVATOs/Ward Incharges are hereby directed to check/examine, before granting their approval to the applicant dealer, whether all the column s of a new registration application i.e Form DVAT 04(parts A,B,C&D), are duly filled by the dealer an d also, whether the scanned copies of all the requisite documents a re attached/uploaded along with the Registration application i.e Form DVAT4.

The above guidelines/procedures shall be followed, in addition to the existing notifications/orders /circulars in the matter, an d non-compliance thereof shall be viewed seriously.

Th is issues with the approval of Commissioner VAT.

Ranjeet Singh
Joint Commissioner (Policy)

Circular regarding Filing of online return for 4th quarter of 2016-17 extension of period thereof upto 15-05-2017

F.3(420)/Policy/VAT/2011/PF/121-126 28-04-2017

Circular No. 2 of 2017-18

Sub: Filing of online return for 4th quarter of 2016-17 - extension of period thereof.

In exercise of the powers conferred under Rule 49A of the Delhi Value Added Tax Rules, 2005. I. H. Rajesh Prasad. Commissioner. Value Added Tax. do hereby extend the last date of filing of online/hard copy of fourth quarter-return for the year 2016-17. in Form DVAT-16, DVAT-17 and DVAT-48 along with required annexure/enclosures up to 15/05/2017.

However the tax due shall continue to be paid in the usual manner as per the provisions of section 3(4) of the Delhi Value Added Tax Act. 2004. The dealers filing the returns through digital signature need not be required to file hard copy of the return/Form DVAT-56.

H. Rajesh Prasad
Commissioner, VAT

Notification No.1/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-

(i) 2.5 per cent. in respect of goods specified in Schedule I,

(ii) 6 per cent. in respect of goods specified in Schedule II, (iii) 9 per cent. in respect of goods specified in Schedule III,

(iv) 14 per cent. in respect of goods specified in Schedule IV,

(v) 1.5 per cent. in respect of goods specified in Schedule V, and

(vi) 0.125 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	0303	Fish, frozen, excluding fish fillets and other fish meat of heading 0304
2.	0304	Fish fillets and other fish meat (whether or not minced), frozen
3.	0305	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process; flours, meals and pellets of fish, fit for human consumption
4.	0306	Crustaceans, whether in shell or not, frozen, dried, salted or in brine; crustaceans, in shell, cooked by steaming or by boiling in water, frozen, dried, salted or in brine; flours, meals and pellets of crustaceans, fit for human consumption

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
5.	0307	Molluscs, whether in shell or not, frozen, dried, salted or in brine; aquatic invertebrates other than crustaceans and molluscs, frozen, dried, salted or in brine; flours, meals and pellets of aquatic invertebra other than crustaceans, fit for human consumption
6.	0308	Aquatic invertebrates other than crustaceans and molluscs, frozen, dried, salted or in brine; smoked aquatic invertebrates other than crustaceans and molluscs, whether or not cooked before or during the smoking process: flours, meals and pellets of aquatic invertebrates other than crustaceans and molluscs, fit for human consumption
7.	0401	Ultra High Temperature (UHT) milk
8.	0402	Milk and cream, concentrated or containing added sugar or other sweetening matter, including skimmed milk powder, milk food for babies [other than condensed milk]
9.	0403	Cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa
10.	0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included
11.	0406	Chena or paneer put up in unit container and bearing a registered brand name
12.	0408	Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter.
13.	0409	Natural honey, put up in unit container and bearing a registered brand name
14.	0410	Edible products of animal origin, not elsewhere specified or included
15.	0502	Pigs', hogs' or boars' bristles and hair; badger hair and other brush making hair; waste of such bristles or hair.
16.	0504	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked.

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
17.	0505	Skins and other parts of birds, with their feathers or down, feathers and parts of feathers (whether or not with trimmed edges) and down, not further worked than cleaned, disinfected or treated for preservation; powder and waste of feathers or parts of feathers
18.	0507 [Except 050790]	Ivory, tortoise-shell, whalebone and whalebone hair, horns, unworked or simply prepared but not cut to shape; powder and waste of these products.
19.	0508	Coral and similar materials, unworked or simply prepared but not otherwise worked; shells of molluscs, crustaceans or echinoderms and cuttle-bone, unworked or simply prepared but not cut to shape, powder and waste thereof.
20.	0510	Ambergris, castoreum, civet and musk; cantharides; bile, whether or not dried; glands and other animal products used in the preparation of pharmaceutical products, fresh, chilled, frozen or otherwise provisionally preserved.
21.	0511	Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption, other than semen including frozen semen.
22.	7	Herb, bark, dry plant, dry root, commonly known as jaribooti and dry flower
23.	0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen
24.	0711	Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
25.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [put up in unit container and bearing a registered brand name]
26.	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen or dried, whether or not sliced or in the form of pellets
27.	0801	Cashew nuts, whether or not shelled or peeled
28.	0802	Dried areca nuts, whether or not shelled or peeled
29.	0802	Dried chestnuts (singhada), whether or not shelled or peeled
30.	08	Dried makhana, whether or not shelled or peeled
31.	0806	Grapes, dried, and raisins
32.	0811	Fruit and nuts, uncooked or cooked by steaming or boiling in water, frozen, whether or not containing added sugar or other sweetening matter

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
33.	0812	Fruit and nuts, provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
34.	0814	Peel of citrus fruit or melons (including watermelons), frozen, dried or provisionally preserved in brine, in sulphur water or in other preservative solutions
35.	0901	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion [other than coffee beans not roasted]
36.	0902	Tea, whether or not flavoured [other than unprocessed green leaves of tea]
37.	0903	Maté
38.	0904	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum or of the genus Pimenta
39.	0905	Vanilla
40.	0906	Cinnamon and cinnamon-tree flowers
41.	0907	Cloves (whole fruit, cloves and stems)
42.	0908	Nutmeg, mace and cardamoms
43.	0909	Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries [other than of seed quality]
44.	0910 [other than 0910 11 10, 0910 30 10]	Ginger other than fresh ginger, saffron, turmeric (curcuma) other than fresh turmeric, thyme, bay leaves, curry and other spices
45.	10	All goods i.e. cereals, put up in unit container and bearing a registered brand name
46.	1001	Wheat and meslin put up in unit container and bearing a registered brand name
47.	1002	Rye put up in unit container and bearing a registered brand name
48.	1003	Barley put up in unit container and bearing a registered brand name
49.	1004	Oats put up in unit container and bearing a registered brand name
50.	1005	Maize (corn) put up in unit container and bearing a registered brand name
51.	1006	Rice put up in unit container and bearing a registered brand name
52.	1007	Grain sorghum put up in unit container and bearing a registered brand name

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
53.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi] put up in unit container and bearing a registered brand name
54.	1101	Wheat or meslin flour put up in unit container and bearing a registered brand name.
55.	1102	Cereal flours other than of wheat or meslin i.e. maize (corn) flour, Rye flour, etc. put up in unit container and bearing a registered brand name
56.	1103	Cereal groats, meal and pellets, including suji and dalia, put up in unit container and bearing a registered brand name
57.	1104	Cereal grains otherwise worked (for example, rolled, flaked, pearled, sliced or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked or ground [other than hulled cereal grains]
58.	1105	Meal, powder, flakes, granules and pellets of potatoes put up in unit container and bearing a registered brand name
59.	1106	Meal and powder of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 1106 10 90], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8, put up in unit container and bearing a registered brand name
60.	1106 10 10	Guar meal
61.	1106 10 90	Guar gum refined split
62.	1109 00 00	Wheat gluten, whether or not dried
63.	12	All goods other than of seed quality
64.	1201	Soya beans, whether or not broken other than of seed quality.
65.	1202	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken other than of seed quality.
66.	1203	Copra other than of seed quality
67.	1204	Linseed, whether or not broken other than of seed quality.
68.	1205	Rape or colza seeds, whether or not broken other than of seed quality.
69.	1206	Sunflower seeds, whether or not broken other than of seed quality
70.	1207	Other oil seeds and oleaginous fruits (i.e. Palm nuts and kernels, cotton seeds, Castor oil seeds, Sesamum seeds, Mustard seeds, Saffower (Carthamustinctorius) seeds, Melon seeds, Poppy seeds, Ajams, Mango kernel, Niger seed, Kokam) whether or not broken, other than of seed quality

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
71.	1208	Flour and meals of oil seeds or oleaginous fruits, other than those of mustard
72.	1210	Hop cones, dried, whether or not ground, powdered or in the form of pellets; lupulin
73.	1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, frozen or dried, whether or not cut, crushed or powdered
74.	1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety Cichoriumintybussativum) of a kind used primarily for human consumption, not elsewhere specified or included
75.	1301	Natural gums, resins, gum-resins and oleoresins (for example, balsams) [other than lac and shellac]
76.	1301	Compounded asafoetida commonly known as heeng
77.	1401	Vegetable materials of a kind used primarily for plaiting (for example, bamboos, rattans, reeds, rushes, osier, raffia, cleaned, bleached or dyed cereal straw, and lime bark)
78.	1404 [other than 1404 90 10, 1404 90 40, 1404 90 50]	Vegetable products not elsewhere specified or included such as cotton linters, Cotton linters, Soap nuts, Hard seeds, pips, hulls and nuts, of a kind used primarily for carving, coconut shell, unworked, Rudraksha seeds [other than bidi wrapper leaves (tendu), betel leaves, Indian katha]
79.	1507	Soya-bean oil and its fractions, whether or not refined, but not chemically modified
80.	1508	Ground-nut oil and its fractions, whether or not refined, but not chemically modified.
81.	1509	Olive oil and its fractions, whether or not refined, but not chemically modified.
82.	1510	Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of heading 1509
83.	1511	Palm oil and its fractions, whether or not refined, but not chemically modified.
84.	1512	Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified.
85.	1513	Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified.

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
86.	1514	Rape, colza or mustard oil and fractions thereof, whether or not refined, but not chemically modified.
87.	1515	Other fixed vegetable fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified.
88.	1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
89.	1517	Edible mixtures or preparations of vegetable fats or vegetable oils or of fractions of different vegetable fats or vegetable oils of this Chapter, other than edible fats or oils or their fractions of heading 1516
90.	1518	Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516
91.	1701	Beet sugar, cane sugar, khandsari sugar
92.	1702	Palmyra sugar
93.	1801	Cocoa beans whole or broken, raw or roasted
94.	1802	Cocoa shells, husks, skins and other cocoa waste
95.	1803	Cocoa paste whether or not de-fatted
96.	1901 20 00	Mixes and doughs for the preparation of bread, pastry and other baker's wares
97.	1902	Seviyan (vermicelli)
98.	1903	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or in similar forms. (sabudana)
99.	1905	Pizza bread
100.	1905 40 00	Rusks, toasted bread and similar toasted products
101.	2106 90	Sweetmeats
102.	2201 90 10	Ice and snow
103.	2301	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves
104.	2303	Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
105.	2304	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soyabean oil [other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake]
106.	2305	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of ground-nut oil [other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake]
107.	2306	Oil-cake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of vegetable fats or oils, other than those of heading 2304 or 2305 [other than aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake]
108.	2307	Wine lees; argol
109.	2401	Tobacco leaves
110.	2502	Unroasted iron pyrites.
111.	2503[except 2503 00 10]	Sulphur of all kinds, other than sublimed sulphur, precipitated sulphur and colloidal sulphur [other than sulphur recovered as by-product in refining of crude oil]
112.	2504	Natural graphite.
113.	2505	Natural sands of all kinds, whether or not coloured, other than metal bearing sands of Chapter 26.
114.	2506	Quartz (other than natural sands); quartzite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.
115.	2507	Kaolin and other kaolinic clays, whether or not calcined.
116.	2508	Other clays (not including expanded clays of heading 6806), andalusite, kyanite and sillimanite, whether or not calcined; mullite; chamotte or dinas earths.
117.	2509	Chalk.
118.	2510	Natural calcium phosphates, natural aluminium calcium phosphates and phosphatic chalk.
119.	2511	Natural barium sulphate (barytes); natural barium carbonate (witherite), whether or not calcined, other than barium oxide of heading 2816.

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
120.	2512	Siliceous fossil meals (for example, kieselguhr, tripolite and diatomite) and similar siliceous earths, whether or not calcined, of an apparent specific gravity of 1 or less.
121.	2513	Pumice stone; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat-treated.
122.	2514	Slate, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.
123.	2515 [Except 2515 12 10, 2515 12 20, 2515 12 90]	Ecaussine and other calcareous monumental or building stone; alabaster [other than marble and travertine]
124.	2516 [Except 2516 11 00, 2516 12 00]	Porphyry, basalt, sandstone and other monumental or building stone, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.
125.	2516 11 00	Granite crude or roughly trimmed
126.	2517	Pebbles, gravel, broken or crushed stone, of a kind commonly used for concrete aggregates, for road metalling or for railway or other ballast, shingle and flint, whether or not heat-treated; macadam of slag, dross or similar industrial waste, whether or not incorporating the materials cited in the first part of the heading; tarred macadam; grenules cheeping and powder of stones heading 2515 or 2516 whether or not heat treated.
127.	2518	Dolomite, whether or not calcined or sintered, including dolomite roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; dolomite ramming mix. 2518 10 dolomite, Not calcined or sintered
128.	2519	Natural magnesium carbonate (magnesite); fused magnesia; dead-burned (sintered) magnesia, whether or not containing small quantities of other oxides added before sintering; other magnesium oxide, whether or not pure.
129.	2520	Gypsum; anhydrite; plasters (consisting of calcined gypsum or calcium sulphate) whether or not coloured, with or without small quantities of accelerators or retarders.
130.	2521	Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement.
131.	2522	Quicklime, slaked lime and hydraulic lime, other than calcium oxide and hydroxide of heading 2825.

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
132.	2524	Asbestos
133.	2525	Mica, including splitting; mica waste.
134.	2526	Natural steatite, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; talc.
135.	2528	Natural borates and concentrates thereof (whether or not calcined), but not including borates separated from natural brine; natural boric acid containing not more than 85% of H3BO3
136.	2529	Feldspar; leucite, nepheline and nepheline syenite; fluorspar.
137.	2530	Mineral substances not elsewhere specified or included.
138.	26 [other than 2619, 2620, 2621]	All ores and concentrates [other than slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel; slag, ash and residues (other than from the manufacture of iron or steel) containing metals, arsenic or their compounds; other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste]
139.	2601	Iron ores and concentrates, including roasted iron pyrites
140.	2602	Manganese ores and concentrates, including ferruginous manganese ores and concentrates with a manganese content of 20% or more, calculated on the dry weight.
141.	2603	Copper ores and concentrates.
142.	2604	Nickel ores and concentrates.
143.	2605	Cobalt ores and concentrates.
144.	2606	Aluminium ores and concentrates.
145.	2607	Lead ores and concentrates.
146.	2608	Zinc ores and concentrates.
147.	2609	Tin ores and concentrates.
148.	2610	Chromium ores and concentrates.
149.	2611	Tungsten ores and concentrates.
150.	2612	Uranium or thorium ores and concentrates.
151.	2613	Molybdenum ores and concentrates.
152.	2614	Titanium ores and concentrates.
153.	2615	Niobium, tantalum, vanadium or zirconium ores and concentrates.
154.	2616	Precious metal ores and concentrates.
155.	2617	Other ores and concentrates
156.	2618	Granulated slag (slag sand) from the manufacture of iron or steel

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
157.	27	Bio-gas
158.	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal
159.	2702	Lignite, whether or not agglomerated, excluding jet
160.	2703	Peat (including peat litter), whether or not agglomerated
161.	2704	Coke and semi coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon
162.	2705	Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons
163.	2706	Tar distilled from coal, from lignite or from peat
164.	2710	Kerosene PDS
165.	2711 12 00, 2711 13 00, 2710 19 00	Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by the Indian Oil Corporation Limited, Hindustan petroleum Corporation Limited or Bharat Petroleum Corporation Limited.
166.	28	Thorium oxalate
167.	28	Enriched KBF4 (enriched potassium fluroborate)
168.	28	Enriched elemental boron
169.	28	Nuclear fuel
170.	2805 11	Nuclear grade sodium
171.	2845	Heavy water and other nuclear fuels
172.	2853	Compressed air
173.	30	Insulin
174.	3002, 3006	Animal or Human Blood Vaccines
175.	30	Diagnostic kits for detection of all types of hepatitis
176.	30	Desferrioxamine injection or deferiprone
177.	30	Cyclosporin
178.	30	Medicaments (including veterinary medicaments) used in bio-chemic systems and not bearing a brand name
179.	30	Oral re-hydration salts
180.	30	Drugs or medicines including their salts and esters and diagnostic test kits, specified in List 1 appended to this Schedule
181.	30	Formulations manufactured from the bulk drugs specified in List 2 appended to this Schedule

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
182.	3101	All goods i.e. animal or vegetable fertilisers or organic fertilisers put up in unit containers and bearing a brand name
183.	32	Wattle extract, quebracho extract, chestnut extract
184.	3202	Enzymatic preparations for pre-tanning
185.	3307 41 00	Agarbatti
186.	3402	Sulphonated castor oil, fish oil or sperm oil
187.	3605 00 10	Handmade safety matches Explanation.– For the purposes of this entry, handmade matches mean matches, in or in relation to the manufacture of which, none of the following processes is ordinarily carried on with the aid of power, namely: - (i) frame filling; (ii) dipping of splints in the composition for match heads; (iii) filling of boxes with matches; (iv) pasting of labels on match boxes, veneers or cardboards; (v) packaging
188.	4001	Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strip
189.	4016	Toy balloons made of natural rubber latex
190.	4011, 4013	Pneumatic tyres or inner tubes, of rubber, of a kind used on / in bicycles, cycle -rickshaws and three wheeled powered cycle rickshaws
191.	4016	Erasers
192.	4101	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split
193.	4102	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split
194.	4103	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split
195.	4104	Tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared
196.	4105	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
197.	4106	Tanned or crust hides and skins of other animals, without wool or hair on, whether or not split, but not further prepared
198.	4401	Wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
199.	4801	Newsprint, in rolls or sheets
200.	4823	Kites
201.	4901	Brochures, leaflets and similar printed matter, whether or not in single sheets
202.	5004 to 5006	Silk yarn
203.	5007	Woven fabrics of silk or of silk waste
204.	5104	Garneted stock of wool or of fine or coarse animal hair, shoddy wool
205.	5105	Wool and fine or coarse animal hair, carded or combed
206.	5106 to 5110	Yarn of wool or of animal hair
207.	5111 to 5113	Woven fabrics of wool or of animal hair
208.	5201 to 5203	Cotton and Cotton waste
209.	5204	Cotton sewing thread, whether or not put up for retail sale
210.	5205 to 5207	Cotton yarn [other than khadi yarn]
211.	5208 to 5212	Woven fabrics of cotton
212.	5301	All goods i.e. flax, raw or processed but not spun; flax tow and waste (including yarn waste and garneted stock)
213.	5302	True hemp (Cannabis sativa L), raw or processed but not spun; tow and waste of true hemp (including yarn waste and garneted stock)
214.	5303	All goods i.e. textile bast fibres [other than jute fibres, raw or processed but not spun]; tow and waste of these fibres (including yarn waste and garneted stock)
215.	5305 to 5308	All goods [other than coconut coir fibre] including yarn of flax, jute, other textile bast fibres, other vegetable textile fibres; paper yarn
216.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
217.	5407, 5408	Woven fabrics of manmade textile materials
218.	5512 to 5516	Woven fabrics of manmade staple fibres
219.	5705	Coir mats, matting and floor covering
220.	5809, 5810	Embroidery or zari articles, that is to say,- imi, zari, kasab, saima, dabka, chumki, gotasitara, naqsi, kora, glass beads, badla, glzal
221.	60	Knitted or crocheted fabrics [All goods]

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
222.	61	Articles of apparel and clothing accessories, knitted or crocheted, of sale value not exceeding Rs. 1000 per piece
223.	62	Articles of apparel and clothing accessories, not knitted or crocheted, of sale value not exceeding Rs. 1000 per piece
224.	63	Other made up textile articles, sets, worn clothing and worn textile articles and rags, of sale value not exceeding Rs. 1000 per piece
225.	64	Footwear having a retail sale price not exceeding Rs.500 per pair, provided that such retail sale price is indelibly marked or embossed on the footwear itself.
226.	6901 00 10	Bricks of fossil meals or similar siliceous earths
227.	6904 10 00	Building bricks
228.	6905 10 00	Earthen or roofing tiles
229.	7018	Glass beads.
230.	84	Pawan Chakki that is Air Based Atta Chakki
231.	8413, 8413 91	Hand pumps and parts thereof
232	8419 19	Solar water heater and system
233.	8437	Machines for cleaning, sorting or grading, seed, grain or dried leguminous vegetables; machinery used in milling industry or for the working of cereals or dried leguminous vegetables other than farm type machinery and parts thereof
234.	84 or 85	Following renewable energy devices & parts for their manufacture (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices/plants
235.	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
236.	8602	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
237.	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
238.	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
239.	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)
240.	8606	Railway or tramway goods vans and wagons, not self-propelled
241.	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
242.	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing
243.	8713	Carriages for disabled persons, whether or not motorised or otherwise mechanically propelled
244.	8802	Other aircraft (for example, helicopters, aeroplanes), other than those for personal use.
245.	8803	Parts of goods of heading 8802
246.	8901	Cruise ships, excursion boats, ferry-boats, cargo ships, barges and similar vessels for the transport of persons or goods
247.	8902	Fishing vessels; factory ships and other vessels for processing or preserving fishery products
248.	8904	Tugs and pusher craft
249.	8905	Light-vessels, fire-floats, dredgers, floating cranes and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms
250.	8906	Other vessels, including warships and lifeboats other than rowing boats
251.	8907	Other floating structures (for example, rafts, tanks, coffer-dams, landing-stages, buoys and beacons)
252.	Any chapter	Parts of goods of headings 8901, 8902, 8904, 8905, 8906, 8907
253.	90	Coronary stents and coronary stent systems for use with cardiac catheters
254.	90 or any other Chapter	Artificial kidney
255.	90 or 84	Disposable sterilized dialyzer or micro barrier of artificial kidney

Schedule I – 2.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
256.	90 or any other Chapter	Parts of the following goods, namely:- (i) Crutches; (ii) Wheel chairs; (iii) Walking frames; (iv) Tricycles; (v) Braillers; and (vi) Artificial limbs
257.	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule
258.	9405 50 31	Kerosene pressure lantern
259.	9405 91 00, 9405 92 00 or 9405 99 00	Parts of kerosene pressure lanterns including gas mantles
260.	9603 10 00	Broomsticks
261.	9704	Postage or revenue stamps, stamp-postmarks, first-day covers, postal stationery (stamped paper), and the like, used or unused, other than those of heading 4907
262.	9705	Numismatic coins
263	9804	Drugs or medicines including their salts and esters and diagnostic test kits specified at S.No.180 above and Formulations specified at S.No.181 above, intended for personal use.

List 1 [See S.No.180 of the Schedule I]

(1) Amikacin
(2) Amphotericin-B
(3) Amrinone
(4) Aprotinin
(5) Baclofen
(6) Bleomycin
(7) Busulphan
(8) BCG vaccine, Iopromide, Iotrolan
(9) Chlorambucil
(10) Chorionic Gonadotrophin
(11) Clindamycin
(12) Cyclophosphamide

(13) Dactinomycin
(14) Daunorubicin
(15) Desferrioxamine
(16) Dimercaprol
(17) Disopyramide phosphate
(18) Dopamine
(19) Eptifibatide
(20) Glucagon
(21) Hydroxyurea
(22) Isoprenaline
(23) Isoflurane
(24) Lactulose
(25) Lomustine
(26) Latanoprost
(27) Melphalan
(28) Mesna
(29) Methotrexate
(30) MMR (Measles, mumps and rubella) vaccine
(31) Mustin Hydrochloride
(32) Pancuronium Bromide
(33) Praziquantel
(34) Protamine
(35) Quinidine
(36) Sodium Cromoglycate spin caps and cartridges
(37) Sodium Hyalauronatesterile 1% and 1.4% solution
(38) Somatostatin
(39) Strontium Chloride (85Sr.)
(40) Thioguanine
(41) Tobramycin
(42) TetanusImmunoglobin
(43) Typhoid Vaccines:
  (a) VI Antigen of Salmonella Typhi, and
  (b) Ty2la cells and attenuated non-pathogenic strains of S.Typhi
(44) Tretinoin
(45) Tribavirin / Ribavirin

(46) Urokinase
(47) Ursodeoxycholic Acid
(48) Vancomycin
(49) Vasopressin
(50) Vecuronium Bromide
(51) Zidovudine
(52) 5-Fluorouracil
(53) Pegulated Liposomal Doxorubicin Hydrochloride injection
(54) Ketoanalogue preparation of essential amino acids
(55) Pergolide
(56) Kit for bedside assay of Troponin-T
(57) Solution for storing, transporting, flushing donor organs for transplant
(58) Miltefosine
(59) Milrinone Lactate
(60) Methoxy Isobutile Isonitrile (MIBI)
(61) Haemophilus Influenzae Type b Vaccine
(62) Mycophenolate Sodium
(63) Verteporfin
(64) Daclizumab
(65) Ganciclovir
(66) Drotrecoginalfa (activated)
(67) Eptacogalfa activated recombinant coagulation factor VIIa
(68) Muromonab CD3
(69) Japanese encephalitis vaccine
(70) Valganciclovir
(71) Low molecular weight heparin
(72) Efavirenz
(73) Emtricitabine;
(74) Azathioprine;
(75) Antinomycin D;
(76) Cytosine Arabinoside (Cytarabine);
(77) Vinblastine Sulphate
(78) Vincristine;
(79) Eurocollins Solution;
(80) Everolimus tablets/dispersible tablets;

(81) Poractant alfa
(82) Troponin-I whole blood test kit;
(83) Blower/mister kit for beating heart surgery;
(84) Fluoro Enzyme Immunoassay Diagnostic kits.
(85) Tablet Telbivudine
(86) Injection Exenatide
(87) DTaP-IPV-Hibor PRP-T combined Vaccine
(88) Pneumococcal-7 Valent Conjugate Vaccine(Diphtheria CRM197 Protein)
(89) Injection Thyrotropin Alfa
(90) Injection Omalizumab.
(91) Abatacept
(92) Daptomycin
(93) Entacevir
(94) Fondaparinux Sodium
(95) Influenza Vaccine
(96) Ixabepilone
(97) Lapatinib
(98) Pegaptanib Sodium injection
(99) Suntinib Malate
(100) Tocilizumab
(101) Agalsidase Beta
(102) Anidulafungin
(103) Capsofungin acetate
(104) Desflurane USP
(105) Heamostatic Matrix with Gelatin and human Thrombin
(106) Imiglucerase
(107) Maraviroc
(108) Radiographic contrast media (Sodium and Meglumine ioxitalamate, Iobitridol and Sodium and meglumine ioxaglate)
(109) Sorafenib tosylate
(110) Varenciline tartrate
(111) 90 Yttrium
(112) Nilotinib
(113) Pneumococcal acchride Conjugate vaccine adsorbed 13-valent suspension for injection

(114) Micafungin sodium for injection
(115) Bevacizumab
(116) Raltegravir potassium
(117) Rotavirus Vaccine (Live Oral Pentavalent)
(118) Pneumococcal Polysaccharide Vaccine
(119) Temsirolimus Concentrate for infusion for injection
(120) Natalizumab
(121) Octreotide
(122) Somatropin
(123) Aurothiomalate Sodium
(124) Asparaginase
(125) Agglutinating Sera
(126) Anti-Diphtheria Normal Human Immunoglobulin
(127) Anti-human lymophocyte immunoglobulin IV
(128) Anti-human thymocyte immunoglobulin IV
(129) Anti-Pertussis Normal Human Immunoglobulin
(130) Anti-Plague serum
(131) Anti-Pseudomonas Normal Human Immunoglobulin
(132) Basiliximab
(133) Beractant Intra-tracheal Suspension
(134) Blood group sera
(135) Botulinum Toxin Type A
(136) Burn therapy dressing soaked in gel
(137) Bovine Thrombin for invitro test for diagnosis in Haemorrhagic disorders
(138) Bovine Albumin
(139) Bretyleum Tossylate
(140) Calcium Disodium Edetate
(141) Carmustine
(142) Cesium Tubes
(143) Calcium folinate
(144) Cholestyramine
(145) Christmas Factor Concentrate (Coagulation factor IX prothrombin complex concentrate)
(146) Cobalt-60
(147) Corticotrophin

(148) Cyanamide
(149) Diagnostic Agent for Detection of Hepatitis B Antigen
(150) Diagnostic kits for detection of HIV antibodies
(151) Diphtheria Antitoxin sera
(152) Diazoxide
(153) Edrophonium
(154) Enzyme linked Immunoabsorbent Assay kits [ELISA KITS]
(155) Epirubicin
(156) Fibrinogen
(157) Floxuridine
(158) Flucytosin
(159) Flecainide
(160) Fludarabine Phosphate
(161) Foetal Bovine Serum (FBS)
(162) Gadolinium DTPA Dimeglumine
(163) Gallium Citrate
(164) Gasgangrene Anti-Toxin Serum
(165) Goserlin Acetate
(166) Hepatitis B Immunoglobulin
(167) Hexamethylmelamine
(168) Hydralazine
(169) Idarubicine
(170) Idoxuridine
(171) Immuno assay kit for blood Fibrinogen degradation product for direct estimation for diagnostic test in D.I.C.
(172) Inactivated rabies vaccine [Human diploid cell]
(173) Inactivated rabies vaccine [Vero-cell]
(174) Intravenous amino acids
(175) Intravenous Fat Emulsion
(176) Iopamidol
(177) Iohexol
    (a) Indium (III) inbleomycin
    (b) Indium113 Sterile generator and elution accessories
    (c) Indium113 in brain scanning kit
    (d) Indium113 in liver scanning kit
(178) Iscador, CLIA diagnostic kits

(179) Levodopa with benserazine
(180) Lenograstim
(181) Meningococcoal A and C combined vaccine with diluant solvent
(182) Methicillin
(183) Metrizamide Inj with diluant
(184) Monocomponent insulins
(185) Mycophenolate Mofetil
(186) Normal Human plasma
(187) Normal Human immunoglobulin
(188) Nuclear magnetic resonance contrast agent
(189) Normal Human serum Albumin
(190) Penicillamine
(191) Pentamidine
(192) Penicillinase
(193) Poliomyelitis vaccine (inactivated and live)
(194) Potassium Aminobenzoate
(195) Porcine Insulin Zinc Suspension
(196) Prednimustine
(197) Porcine and Bovine insulin
(198) Purified Chick Embryo Cell Rabies Vaccine
(199) Pyridostigmine
(200) Pneumocystis cariniiI F kits
(201) Prostaglandin E1 (PGE1)
(202) Radio-immunoassay kit for hormones (T3, T4, TSH Insulin, Glucogen, Growth Hormone, Cortisol, L. H., FSH and Digoxin)
(203) Radioisotope TI 201
  (a) Rabbit brains thromboplastin for PT test
  (b) Reagent for PT tests
  (c) Human Thrombin for TT tests
(204) Rabies immune globulin of equine origin
(205) Sevoflurane
(206) Recuronium Bromide
(207) Septopal beads and chains
(208) Sodium Arsenate
(209) Freeze Dried Form of Human Follicle Stimulating and Luteinising Hormones

(210) Solution of Nucleotides and Nucliosides
(211) Specific Desensitizing Vaccine
(212) Sterile Absorbable Haemostat for control of surgical vessel bleeding
(213) Strontium SR-89 Chloride
(214) Suxamethonium Chloride
(215) Selenium-75
(216) Teicoplanin
(217) Tetrofosmin
(218) Ticarcillin
(219) Tranexamic Acid
(220) Tocainide
(221) Tri-iodothyronine
(222) Triethylene Tetramine
(223) Thrombokinase
(224) Teniposide
(225) Trans-1-diamino cyclohexane Oxalatoplatinum
(226) Ticarcillin Disodium and Potassium Clavulanate combination
(227) Vindesin Sulphate
(228) X-ray diagnostic agents, the following:-
  (a) Propylidone
  (b) Ethyliodophenylundecylate
  (c) Iodipammide methyl glucamine
  (d) Lipidollutra fluid
  (e) Patentblue
  (f) Zalcitabine
(229) Zoledronic Acid
(230) Anti-Haemophilic Factors Concentrate (VIII and IX)

List 2 [See S.No.181 of the Schedule I]

(1) Streptomycin
(2) Isoniazid
(3) Thiacetazone
(4) Ethambutol
(5) Sodium PAS
(6) Pyrazinamide

(7) Dapsone
(8) Clo- fazamine
(9) Tetracycline Hydrochloride
(10) Pilocarpine
(11) Hydrocortisone
(12) Idoxuridine
(13) Acetazolamide
(14) Atro- pine
(15) Homatroprn
(16) Chloroquine
(17) Amodiaquine
(18) Quinine
(19) Pyrimethamine
(20) Sulfametho pyrezine
(21) Diethyl Carbamazine
(22) Arteether or formulation of artemisinin.

List 3 [See S.No.257 of the Schedule I]

(A) (1) Braille writers and braille writing instruments
(2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
(3) Canes, Electronic aids like the Sonic Guide
(4) Optical, Environmental Sensors
(5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
(6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Com- passes and Spar Wheels
(7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks
(8) Drafting, Drawing aids, tactile displays
(9) Specially adapted clocks and watches
(B) (1) Orthopaedic appliances falling under heading No. 90.21 of the First Schedule
(2) Wheel chairs falling under heading No. 87.13 of the First Schedule
(C) Artificial electronic larynx and spares thereof
(D) Artificial electronic ear (Cochlear implant)
(E) (1) Talking books (in the form of cassettes, discs or other sound reproductions) and large-print books, braille embossers, talking calculators, talking thermometers

(2) Equipment for the mechanical or the computerized production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereo typing machines

(3) Braille paper

(4) All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind

(5) Aids for improving mobility of the blind such as electronic orientation and obstacle detection appliance and white canes

(6) Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind

(7) Assistive listening devices, audiometers

(8) External catheters, special jelly cushions to prevent bed sores, stair lift, urine collection bags

(9) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instru- ments and implants including bone cement.

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	01012100, 010129	Live horses
2.	0202	Meat of bovine animals, frozen and put up in unit containers
3.	0203	Meat of swine, frozen and put up in unit containers
4.	0204	Meat of sheep or goats, frozen and put up in unit containers
5.	0205	Meat of horses, asses, mules or hinnies, frozen and put up in unit containers
6.	0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, frozen and put up in unit containers
7.	0207	Meat and edible offal, of the poultry of heading 0105, frozen and put up in unit containers
8.	0208	Other meat and edible meat offal, frozen and put up in unit containers
9.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, frozen and put up in unit containers

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
10.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, salted, in brine, dried or smoked, put up in unit containers
11.	0210	Meat and edible meat offal, salted, in brine, dried or smoked put up in unit containers; edible flours and meals of meat or meat offal put up in unit containers
12.	0405	Butter and other fats (i.e. ghee, butter oil, etc.) and oils derived from milk; dairy spreads
13.	0406	Cheese
14.	0801	Brazil nuts, dried, whether or not shelled or peeled
15.	0802	Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (Coryius spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.) [other than dried areca nuts]
16.	0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, dried
17.	0813	Fruit, dried, other than that of headings 0801 to 0806; mixtures of nuts or dried fruits of Chapter 8
18.	1108	Starches; inulin
19.	1501	Pig fats (including lard) and poultry fat, other than that of heading 0209 or 1503
20.	1502	Fats of bovine animals, sheep or goats, other than those of heading 1503
21.	1503	Lard stearin, lard oil, oleo stearin, oleo-oil and tallow oil, not emulsified or mixed or otherwise prepared
22.	1504	Fats and oils and their fractions, of fish or marine mammals, whether or not refined, but not chemically modified
23.	1505	Wool grease and fatty substances derived therefrom (including lanolin)
24.	1506	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified
25.	1516	Animal fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
26.	1517	Edible mixtures or preparations of animal fats or animal oils or of fractions of different animal fats or animal oils of this Chapter, other than edible fats or oils or their fractions of heading 1516

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
27.	1518	Animal fats and animal oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified of included
28.	1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
29.	1602	Other prepared or preserved meat, meat offal or blood
30.	1603	Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates
31.	1604	Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs
32.	1605	Crustaceans, molluscs and other aquatic invertebrates prepared or preserved
33.	2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid
34.	2002	Tomatoes prepared or preserved otherwise than by vinegar or acetic acid
35.	2003	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid
36.	2004	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006
37.	2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006
38.	2006	Vegetables, fruit, nuts, fruit-peel and other parts of plants, preserved by sugar (drained, glacé or crystallised)
39.	2007	Jams, fruit jellies, marmalades, fruit or nut purée and fruit or nut pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter
40.	2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included; such as Ground-nuts, Cashew nut, roasted, salted or roasted and salted, Other roasted nuts and seeds, squash of Mango, Lemon, Orange, Pineapple or other fruits
41.	2009	Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
42.	2101 30	Roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof
43.	2102	Yeasts and prepared baking powders
44.	2103 [other than 2103 90 10, 2103 90 30, 2103 90 40]	Sauces and preparations therefor [other than Curry paste; mayonnaise and salad dressings; mixed condiments and mixed seasoning
45.	2106	Texturised vegetable proteins (soya bari) and Bari made of pulses including mungodi
46.	2106 90	Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form
47.	2202 90 10	Soya milk drinks
48.	2202 90 20	Fruit pulp or fruit juice based drinks
49.	2202 90 90	Tender coconut water put up in unit container and bearing a registered brand name
50.	2202 90 30	Beverages containing milk
51.	2515 12 10	Marble and travertine blocks
52.	2516	Granite blocks
53.	28	Anaesthetics
54.	28	Potassium Iodate
55.	28	Steam
56.	28	Micronutrients, which are covered under serial number 1(f) of Schedule 1, Part (A) of the Fertilizer Control Order, 1985 and are manufactured by the manufacturers which are registered under the Fertilizer Control Order, 1985
57.	2801 20	Iodine
58.	2847	Medicinal grade hydrogen peroxide
59.	29	Gibberellic acid
60.	3001	Glands and other organs for organo-therapeutic uses, dried, whether or not powdered; extracts of glands or other organs or of their secretions for organo-therapeutic uses; heparin and its salts; other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
61.	3002	Animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; toxins, cultures of micro-organisms (excluding yeasts) and similar products
62.	3003	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale, including Ayurvaedic, Unani, Siddha, homoeopathic or Bio-chemic systems medicaments
63.	3004	Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, including Ayurvaedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale
64.	3005	Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes
65.	3006	Pharmaceutical goods specified in Note 4 to this Chapter [i.e. Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics; sterile surgical or denatal adhesion barriers, whether or not absorbable; Waste pharmaceuticals] [other than contraceptives]
66.	3102	Mineral or chemical fertilisers, nitrogenous, other than those which are clearly not to be used as fertilizers
67.	3103	Mineral or chemical fertilisers, phosphatic, other than those which are clearly not to be used as fertilizers
68.	3104	Mineral or chemical fertilisers, potassic, other than those which are clearly not to be used as fertilizers
69.	3105	Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg, other than those which are clearly not to be used as fertilizers
70.	3215	Fountain pen ink
71.	3215	Ball pen ink

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
72.	3306 10 10	Tooth powder
73.	3307 41 00	Odoriferous preparations which operate by burning [other than agarbattis]
74.	29, 30, 3302	Following goods namely:- a. Menthol and menthol crystals, b. Peppermint (Mentha Oil), c. Fractionated / de-terpenated mentha oil (DTMO), d. De-mentholised oil (DMO), e. Spearmint oil, f. Mentha piperita oil
75.	3406	Candles, tapers and the like
76.	3701	Photographic plates and film for x-ray for medical use
77.	3705	Photographic plates and films, exposed and developed, other than cinematographic film
78.	3706	Photographic plates and films, exposed and developed, whether or not incorporating sound track or consisting only of sound track, other than feature films.
79.	3818	Silicon wafers
80.	3822	All diagnostic kits and reagents
81.	3926	Feeding bottles
82.	3926	Plastic beads
83.	4007	Latex Rubber Thread
84.	4014	Nipples of feeding bottles
85.	4015	Surgical rubber gloves or medical examination rubber gloves
86.	4107	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114
87.	4112	Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114
88.	4113	Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114
89.	4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
90.	4115	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour
91.	4203	Gloves specially designed for use in sports
92.	44 or any Chapter	The following goods, namely: — a. Cement Bonded Particle Board; b. Jute Particle Board; c. Rice Husk Board; d. Glass-fibre Reinforced Gypsum Board (GRG) e. Sisal-fibre Boards; f. Bagasse Board; and g. Cotton Stalk Particle Board h. Particle/fibre board manufactured from agricultural crop residues
93.	4404	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking-sticks, umbrellas, tool handles or the like
94.	4405	Wood wool; wood flour
95.	4406	Railway or tramway sleepers (cross-ties) of wood
96.	4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm [for match splints]
97.	4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood
98.	4416	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves
99.	4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
100.	4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94
101.	4421	Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware]
102.	4501	Natural cork, raw or simply prepared
103.	4601	Plaits and similar products of plaiting materials, whether or not assembled into strips; plaiting materials, plaits and similar products of plaiting materials, bound together in parallel strands or woven, in sheet form, whether or not being finished articles (for example, mats matting, screens) of vegetables materials such as of Bamboo, of rattan, of Other Vegetable materials
104.	4602	Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from goods of heading 4601; articles of loofah
105.	4701	Mechanical wood pulp
106.	4702	Chemical wood pulp, dissolving grades
107.	4703	Chemical wood pulp, soda or sulphate, other than dissolving grades
108.	4704	Chemical wood pulp, sulphite, other than dissolving grades
109.	4705	Wood pulp obtained by a combination of mechanical and chemical pulping processes
110.	4706	Pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material
111.	4707	Recovered (waste and scrap) paper or paperboard
112.	4802	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 4801 or 4803; hand-made paper and paperboard
113.	4804	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 4802 or 4803
114.	4805	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in Note 3 to this Chapter

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
115.	4806 20 00	Greaseproof papers
116.	4806 40 10	Glassine papers
117.	4807	Composite paper and paperboard (made by sticking flat layers of paper or paperboard together with an adhesive), not surface-coated or impregnated, whether or not internally reinforced, in rolls or sheets
118.	4808	Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in heading 4803
119.	4810	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets of any size
120.	4811	Aseptic packaging paper
121.	4817 30	Boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery
122.	4819	Cartons, boxes and cases of corrugated paper or paper board
123.	4820	Exercise book, graph book, & laboratory note book and notebooks
124.	4823	Paper pulp moulded trays
125.	48	Paper splints for matches, whether or not waxed, Asphaltic roofing sheets
126.	4904 00 00	Music, printed or in manuscript, whether or not bound or illustrated
127.	4906 00 00	Plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, being originals drawn by hand; hand-written texts; photographic reproductions on sensitised paper and carbon copies of the foregoing
128.	4907	Unused postage, revenue or similar stamps of current or new issue in the country in which they have, or will have, a recognised face value; stamp-impressed paper; banknotes; cheque forms; stock, share or bond certificates and similar documents of title
129.	4908	Transfers (decalcomanias)
130.	4909	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings
131.	4910	Calendars of any kind, printed, including calendar blocks

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
132.	4911	Other printed matter, including printed pictures and photographs; such as Trade advertising material, Commercial catalogues and the like, printed Posters, Commercial catalogues, Printed inlay cards, Pictures, designs and photographs, Plan and drawings for architectural engineering, industrial, commercial, topographical or similar purposes reproduced with the aid of computer or any other devices
133.	5601	Wadding of textile materials and articles thereof; such as Absorbent cotton wool
134.	5602	Felt, whether or not impregnated, coated, covered or laminated
135.	5603	Nonwovens, whether or not impregnated, coated, covered or laminated
136.	5604	Rubber thread and cord, textile covered; textile yarn, and strip and the like of heading 5404 or 5405, impregnated, coated, covered or sheathed with rubber or plastics
137.	5605	Metallised yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal; such as Real zari thread (gold) and silver thread, combined with textile thread), Imitation zari thread
138.	5606	Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn
139.	5607	Twine, cordage, ropes and cables, whether or not plaited or braided and whether or not impregnated, coated, covered or sheathed with rubber or plastics
140.	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
141.	5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included
142.	5701	Carpets and other textile floor coverings, knotted, whether or not made up
143.	5702	Carpets and other textile floor coverings, woven, not tufted or flocked, whether or not made up, including “Kelem”, “Schumacks”, “Karamanie” and similar hand-woven rugs
144.	5703	Carpets and other textile floor coverings, tufted, whether or not made up
145.	5704	Carpets and other textile floor coverings, of felt, not tufted or flocked, whether or not made up

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
146.	5705	Other carpets and other textile floor coverings, whether or not made up; such as Mats and mattings including Bath Mats, where cotton predominates by weight, of Handloom, Cotton Rugs of handloom
147.	5801	Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806
148.	5802	Terry towelling and similar woven terry fabrics, other than narrow fabrics of heading 5806; tufted textile fabrics, other than products of heading 5703
149.	5803	Gauze, other than narrow fabrics of heading 5806
150.	5804	Tulles and other net fabrics, not including woven, knitted or crocheted fabrics; lace in the piece, in strips or in motifs, other than fabrics of headings 6002 to 6006
151.	5805	Hand-woven tapestries of the type Gobelins, Flanders, Aubusson, Beauvais and the like, and needle-worked tapestries (for example, petit point, cross stitch), whether or not made up
152.	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)
153.	5807	Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered
154.	5808	Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles
155.	5809	Woven fabrics of metal thread and woven fabrics of metallised yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included; such as Zari borders [other than Embroidery or zari articles, that is to say,- imi, zari, kasab, saima, dabka, chumki, gota sitara, naqsi, kora, glass beads, badla, glzal]
156.	5810	Embroidery in the piece, in strips or in motifs, Embroidered badges, motifs and the like [other than Embroidery or zari articles, that is to say,- imi, zari, kasab, saima, dabka, chumki, gota sitara, naqsi, kora, glass beads, badla, glzal]
157.	5811	Quilted textile products in the piece, composed of one or more layers of textile materials assembled with padding by stitching or otherwise, other than embroidery of heading 5810
158.	5901	Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics of a kind used for hat foundations

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
159.	5902	Tyre cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon
160.	5903	Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902
161.	5904	Linoleum, whether or not cut to shape; floor coverings consisting of a coating or covering applied on a textile backing, whether or not cut to shape
162.	5905	Textile wall coverings
163.	5906	Rubberised textile fabrics, other than those of heading 5902
164.	5907	Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like
165.	5908	Textile wicks, woven, plaited or knitted , for lamps, stoves, lighters, candles or the like; incandescent gas mantles and tubular knitted gas mantle fabric therefor, whether or not impregnated
166.	5909	Textile hose piping and similar textile tubing, with or without lining, armour or accessories of other materials
167.	5910	Transmission or conveyor belts or belting, of textile material, whether or not impregnated, coated, covered or laminated with plastics, or reinforced with metal or other material
168.	5911	Textile products and articles, for technical uses, specified in Note 7 to this Chapter; such as Textile fabrics, felt and felt-lined woven fabrics, coated, covered or laminated with rubber, leather or other material, of a kind used for card clothing, and similar fabrics of a kind used for other technical purposes, including narrow fabrics made of velvet impregnated with rubber, for covering weaving spindles (weaving beams); Bolting cloth, whether or Not made up; Felt for cotton textile industries, woven; Woven textiles felt, whether or not impregnated or coated, of a kind commonly used in other machines, Cotton fabrics and articles used in machinery and plant, Jute fabrics and articles used in machinery or plant, Textile fabrics of metalised yarn of a kind commonly used in paper making or other machinery, Straining cloth of a kind used in oil presses or the like, including that of human hair, Paper maker's felt, woven, Gaskets, washers, polishing discs and other machinery parts of textile articles
169.	61	Articles of apparel and clothing accessories, knitted or crocheted, of sale value exceeding Rs. 1000 per piece
170.	62	Articles of apparel and clothing accessories, not knitted or crocheted, of sale value exceeding Rs. 1000 per piece
171.	63	Other made up textile articles, sets, worn clothing and worn textile articles and rags, of sale value exceeding Rs. 1000 per piece

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
172.	6601	Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas)
173.	6602	Walking-sticks, seat-sticks, whips, riding-crops and the like
174.	6603	Parts, trimmings and accessories of articles of heading 6601 or 6602
175.	6701	Skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scapes)
176.	68	Sand lime bricks
177.	6815	Fly ash bricks and fly ash blocks
178.	7015 10	Glasses for corrective spectacles and flint buttons
179.	7020	Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns
180.	7310 or 7326	Mathematical boxes, geometry boxes and colour boxes, pencil sharpeners
181.	7317	Animal shoe nails
182.	7319	Sewing needles
183.	7321	Kerosene burners, kerosene stoves and wood burning stoves of iron or steel
184.	7323	Table, kitchen or other household articles of iron & steel; Utensils
185.	7418	Table, kitchen or other household articles of copper; Utensils
186.	7615	Table, kitchen or other household articles of aluminium; Utensils
187.	8211	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208, and blades therefor
188.	8214	Paper knives, Pencil sharpeners and blades therefore
189.	8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware
190.	8401	Fuel elements (cartridges), non-irradiated, for nuclear reactors
191.	8408	Fixed Speed Diesel Engines of power not exceeding 15HP
192.	8413	Power driven pumps primarily designed for handling water, namely, centrifugal pumps (horizontal and vertical), deep tube-well turbine pumps, submersible pumps, axial flow and mixed flow vertical pumps
193.	8414 20 10	Bicycle pumps
194.	8414 20 20	Other hand pumps
195.	8414 90 12	Parts of air or vacuum pumps and compressors of bicycle pumps

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
196.	8432	Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers
197.	8433	Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437
198.	8434	Milking machines and dairy machinery
199.	8436	Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders
200.	8452	Sewing machines
201.	8479	Composting Machines
202.	8517	Telephones for cellular networks or for other wireless networks
203.	85	Parts for manufacture of Telephones for cellular networks or for other wireless networks
204.	8525 60	Two-way radio (Walkie talkie) used by defence, police and paramilitary forces etc.
205.	8539	LED lamps
206.	87	Electrically operated vehicles, including two and three wheeled electric motor vehicles
207.	8701	Tractors (except road tractors for semi-trailers of engine capacity more than 1800 cc)
208.	8712	Bicycles and other cycles (including delivery tricycles), not motorised
209.	8714	Parts and accessories of bicycles and other cycles (including delivery tricycles), not motorised, of 8712
210.	8716 20 00	Self-loading or self-unloading trailers for agricultural purposes
211.	8716 80	Hand propelled vehicles (e.g. hand carts, rickshaws and the like); animal drawn vehicles
212.	90 or any other Chapter	Blood glucose monitoring system (Glucometer) and test strips
213.	90 or any other Chapter	Patent Ductus Arteriousus / Atrial Septal Defect occlusion device
214.	9001	Contact lenses; Spectacle lenses
215.	9002	Intraocular lens
216.	9004	Spectacles, corrective

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
217.	9017 20	Drawing and marking out instruments; Mathematical calculating instruments; pantographs; Other drawing or marking out instruments
218.	9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments
219.	9019	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus
220.	9020	Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters
221.	9021	Orthopaedic appliances, including crutches, surgical belts and trusses; splints and other fracture appliances; artificial parts of the body
222.	9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examinations or treatment tables, chairs and the light
223.	9404	Coir products [except coir mattresses]
224.	9404	Products wholly made of quilted textile materials
225.	9405, 9405 50 31	Hurricane lanterns, Kerosene lamp / pressure lantern, petromax, glass chimney, and parts thereof
226.	9405	LED lights or fixtures including LED lamps
227.	9405	LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)
228.	9503	Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof) [other than electronic toys]
229.	9504	Playing cards, chess board, carom board and other board games, like ludo, etc. [other than Video game consoles and Machines]
230.	9506	Sports goods other than articles and equipments for general physical exercise
231.	9507	Fishing rods, fishing hooks, and other line fishing tackle; fish landing nets, butterfly nets and smilar nets; decoy “birds” (other than those of heading 9208) and similar hunting or shooting requisites
232	9608	Pens [other than Fountain pens, stylograph pens]
233.	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor’s chalk

Schedule II – 6%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
234.	9615	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516, and parts thereof
235.	9619	Sanitary towels (pads) and tampons, napkins and napkin liners for babies and similar articles, of any material
236.	9701	Paintings, drawings and pastels, executed entirely by hand, other than drawings of heading 4906 and other than hand-painted or hand-decorated manufactured articles; collages and similar decorative plaques
237.	9702	Original engravings, prints and lithographs
238.	9703	Original sculptures and statuary, in any material
239.	9705	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest [other than numismatic coins]
240.	9706	Antiques of an age exceeding one hundred years
241.	9804	Other Drugs and medicines intended for personal use
242.	-	Lottery run by State Governments *Explanation 1.*- For the purposes of this entry, value of supply of lottery under sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher. *Explanation 2.*- (1) "Lottery run by State Governments" means a lottery not allowed to be sold in any state other than the organising state. (2) Organising state has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	0402 91 10, 0402 99 20	Condensed milk
2.	1107	Malt, whether or not roasted

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
3.	1302	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products.
4.	1404 90 10	Bidi wrapper leaves (tendu)
5.	1404 90 50	Indian katha
6.	1517 10	All goods i.e. Margarine, Linoxyn
7.	1520 00 00	Glycerol, crude; glycerol waters and glycerol lyes
8.	1521	Vegetable waxes (other than triglycerides), Beeswax, other insect waxes and spermaceti, whether or not refined or coloured
9.	1522	Degras, residues resulting from the treatment of fatty substances or animal or vegetable waxes
10.	1701 91, 1701 99	All goods, including refined sugar containing added flavouring or colouring matter, sugar cubes
11.	1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel [other than palmyra sugar and Palmyra jaggery]
12.	1704	Sugar confectionery (excluding white chocolate and bubble / chewing gum) [other than bura, batasha]
13.	1901	Preparations suitable for infants or young children, put up for retail sale
14.	1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared
15.	1904 [other than 1904 10 20]	All goods i.e. Corn flakes, bulgar wheat, prepared foods obtained from cereal flakes [other than Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki]
16.	1905 [other than 1905 32 11, 1905 90 40]	All goods i.e. Waffles and wafers other than coated with chocolate or containing chocolate; biscuits; Pastries and cakes [other than pizza bread, Waffles and wafers coated with chocolate or containing chocolate, papad, bread]
17.	2101 20	All goods i.e Extracts, essences and concentrates of tea or mate, and preparations with a basis of these extracts, essences or concentrates or with a basis of tea or mate
18.	2103 90 10	Curry paste

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
19.	2103 90 30	Mayonnaise and salad dressings
20.	2103 90 40	Mixed condiments and mixed seasoning
21.	2104	Soups and broths and preparations therefor; homogenised composite food preparations
22.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
23.	2106	All kinds of food mixes including instant food mixes, soft drink concentrates, Sharbat, Betel nut product known as "Supari", Sterilized or pasteurized millstone, ready to eat packaged food and milk containing edible nuts with sugar or other ingredients, Diabetic foods; [other than Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form]
24.	2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured
25.	2207	Ethyl alcohol and other spirits, denatured, of any strength
26.	2209	Vinegar and substitutes for vinegar obtained from acetic acid
27.	2503 00 10	Sulphur recovered as by-product in refining of crude oil
28.	2619	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel
29.	2620	Slag, ash and residues (other than from the manufacture of iron or steel) containing metals, arsenic or their compounds
30.	2621	Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste
31.	2707	Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents, such as Benzole (benzene), Toluole (toluene), Xylole (xylenes), Naphthelene
32.	2708	Pitch and pitch coke, obtained from coal tar or from other mineral tars
33.	2710	Petroleum oils and oils obtained from bituminous minerals, other than petroleum crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils; [other than Avgas and Kerosene PDS and other than petrol, Diesel and ATF, not in GST]

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
34.	2711	Petroleum gases and other gaseous hydrocarbons, such as Propane, Butanes, Ethylene, propylene, butylene and butadiene [Other than Liquefied Propane and Butane mixture, Liquefied Propane, Liquefied Butane and Liquefied Petroleum Gases (LPG) for supply to household domestic consumers or to non-domestic exempted category (NDEC) customers by the Indian Oil Corporation Limited, Hindustan petroleum Corporation Limited or Bharat Petroleum Corporation Limited]
35.	2712	Petroleum jelly; paraffin wax, micro-crystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured
36.	2713	Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals
37.	2714	Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks
38.	2715	Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs)
39.	28	All inorganic chemicals [other than those specified in the Schedule for exempted goods or other Rate Schedules for goods]
40.	29	All organic chemicals other than giberellic acid
41.	30	Nicotine polacrilex gum
42.	3102	Mineral or chemical fertilisers, nitrogenous, other than those which are clearly not to be used as fertilizers
43.	3103	Mineral or chemical fertilisers, phosphatic, which are clearly not to be used as fertilizers
44.	3104	Mineral or chemical fertilisers, potassic, which are clearly not to be used as fertilizers
45.	3105	Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg, which are clearly not to be used as fertilizers
46.	3201	Tanning extracts of vegetable origin; tannins and their salts, ethers, esters and other derivatives (other than Wattle extract, quebracho extract, chestnut extract)
47.	3202	Synthetic organic tanning substances; inorganic tanning substances; tanning preparations, whether or not containing natural tanning substances (other than Enzymatic preparations for pre-tanning)

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
48.	3203	Colouring matter of vegetable or animal origin (including dyeing extracts but excluding animal black), whether or not chemically defined; preparations as specified in Note 3 to this Chapter based on colouring matter of vegetable or animal origin
49.	3204	Synthetic organic colouring matter, whether or not chemically defined; preparations as specified in Note 3 to this Chapter based on synthetic organic colouring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined
50.	3205	Colour lakes; preparations as specified in Note 3 to this Chapter based on colour lakes
51.	3206	Other colouring matter; preparations as specified in Note 3 to this Chapter, other than those of heading 32.03, 32.04 or 32.05; inorganic products of a kind used as luminophores, whether or not chemically defined
52.	3207	Prepared pigments, prepared opacifiers, prepared colours, vitrifiable enamels, glazes, engobes (slips), liquid lustres, and other similar preparations of a kind used in ceramic, enamelling or glass industry
53.	3211 00 00	Prepared driers
54.	3212	Pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other colouring matter put up in forms or packings for retail sale
55.	3215	Printing ink, writing or drawing ink and other inks, whether or not concentrated or solid (Fountain pen ink and Ball pen ink)
56.	3301	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; extracted oleoresins; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils; such as essential oils of citrus fruit, essential oils other than those of citrus fruit such as Eucalyptus oil, etc., Flavouring essences all types (including those for liquors), Attars of all kinds in fixed oil bases

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
57.	3302	Mixtures of odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages; such as Synthetic perfumery compounds [other than Menthol and menthol crystals, Peppermint (Mentha Oil), Fractionated / de-terpenated mentha oil (DTMO), De-mentholised oil (DMO), Spearmint oil, Mentha piperita oil]
58.	3304 20 00	Kajal pencil sticks
59.	3305 9011, 3305 90 19	Hair oil
60.	3306 10 20	Dentifices - Toothpaste
61.	3401 [except 340130]	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap
62.	3404	Artificial waxes and prepared waxes
63.	3407	Preparations known as “dental wax” or as “dental impression compounds”, put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate)
64.	3501	Casein, caseinates and other casein derivatives; casein glues
65.	3502	Albumins (including concentrates of two or more whey proteins, containing by weight more than 80% whey proteins, calculated on the dry matter), albuminates and other albumin derivatives
66.	3503	Gelatin (including gelatin in rectangular (including square) sheets, whether or not surface-worked or coloured) and gelatin derivatives; isinglass; other glues of animal origin, excluding casein glues of heading 3501
67.	3504	Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed; including Isolated soya protein
68.	3505	Dextrins and other modified starches (for example, pregelatinised or esterified starches); glues based on starches, or on dextrins or other modified starches
69.	3506	Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg
70.	3507	Enzymes, prepared enzymes

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
71.	3601	Propellant powders
72.	3603	Safety fuses; detonating fuses; percussion or detonating caps; igniters; electric detonators
73.	3605	Matches (other than handmade safety matches [3605 00 10])
74.	3701	Photographic plates and film in the flat, sensitised, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitised, unexposed, whether or not in packs; such as Instant print film, Cinematographic film (other than for x-ray for Medical use)
75.	3702	Photographic film in rolls, sensitised, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitised, unexposed
76.	3703	Photographic paper, paperboard and textiles, sensitised, unexposed
77.	3704	Photographic plates, film, paper, paperboard and textiles, exposed but not developed
78.	3706	Photographic plates and films, exposed and developed, whether or not incorporating sound track or consisting only of sound track, for feature films
79.	3707	Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use
80.	3801	Artificial graphite; colloidal or semi-colloidal graphite; preparations based on graphite or other carbon in the form of pastes, blocks, plates or other semi-manufactures
81.	3802	Activated carbon; activated natural mineral products; animal black, including spent animal black
82.	3803 00 00	Tall oil, whether or not refined
83.	3804	Residual lyes from the manufacture of wood pulp, whether or not concentrated, desugared or chemically treated, including lignin sulphonates
84.	3805	Gum, wood or sulphate turpentine and other terpenic oils produced by the distillation or other treatment of coniferous woods; crude dipentene; sulphite turpentine and other crude para-cymene; pine oil containing alpha-terpineol as the main constituent
85.	3806	Rosin and resin acids, and derivatives thereof; rosin spirit and rosin oils; run gums

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
86.	3807	Wood tar; wood tar oils; wood creosote; wood naphtha; vegetable pitch; brewers' pitch and similar preparations based on rosin, resin acids or on vegetable pitch
87.	3808	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products
88.	3809	Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included
89.	3810	Pickling preparations for metal surfaces; fluxes and other auxiliary preparations for soldering, brazing or welding; soldering, brazing or welding powders and pastes consisting of metal and other materials; preparations of a kind used as cores or coatings for welding electrodes or rods
90.	3812	Prepared rubber accelerators; compound plasticisers for rubber or plastics, not elsewhere specified or included; anti-oxidising preparations and other compound stabilisers for rubber or plastics.; such as Vulcanizing agents for rubber
91.	3815	Reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included
92.	3816	Refractory cements, mortars, concretes and similar compositions, other than products of heading 3801
93.	3817	Mixed alkylbenzenes and mixed alkylnaphthalenes, other than those of heading 2707 or 2902
94.	3818	Chemical elements doped for use in electronics, in the form of discs, wafers or similar forms; chemical compounds doped for use in electronics [other than silicon wafers]
95.	3821	Prepared culture media for the development or maintenance of micro-organisms (including viruses and the like) or of plant, human or animal cells
96.	3823	Industrial monocarboxylic fatty acids, acid oils from refining; industrial fatty alcohols
97.	3824	Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included
98.	3825	Residual products of the chemical or allied industries, not elsewhere specified or included; [except municipal waste; sewage sludge; other wastes specified in Note 6 to this Chapter.]

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
99.	3826	Biodiesel and mixtures thereof, not containing or containing less than 70% by weight of petroleum oils and oils obtained from bituminous minerals
100.	3901 to 3913	All goods i.e. polymers; Polyacetals, other polyethers, epoxide resins, polycarbonates, alkyd resins, polyallyl esters, other polyesters; polyamides; Amino-resins, phenolic resins and polyurethanes; silicones; Petroleum resins, coumarone-indene resins, polyterpenes, polysulphides, polysulphones and other products specified in Note 3 to this Chapter, not elsewhere specified or included; Cellulose and its chemical derivatives, not elsewhere specified or included; Natural polymers (for example, alginic acid) and modified natural polymers (for example, hardened proteins, chemical derivatives of natural rubber), not elsewhere specified or included; in primary forms
101.	3914	Ion exchangers based on polymers of headings 3901 to 3913, in primary forms
102.	3915	Waste, parings and scrap, of plastics
103.	3916	Monofilament of which any cross-sectional dimension exceeds 1 mm, rods, sticks and profile shapes, whether or not surface-worked but not otherwise worked, of plastics
104.	3917	Tubes, pipes and hoses, and fittings therefor, of plastics
105.	3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls
106.	3920	Other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials
107.	3921	Other plates, sheets, film, foil and strip, of plastics
108.	3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics
109.	3924	Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics
110.	3925	Builder's wares of plastics, not elsewhere specified
111.	3926	PVC Belt Conveyor, Plastic Tarpaulin
112.	4002	Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip; such as Latex, styrene butadiene rubber, butadiene rubber (BR), Isobutene-isoprene (butyl) rubber (IIR), Ethylene-propylene-Non-conjugated diene rubber (EPDM)

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
113.	4003	Reclaimed rubber in primary forms or in plates, sheets or strip
114.	4004	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom
115.	4005	Compounded rubber, unvulcanised, in primary forms or in plates, sheets or strip
116.	4006	Other forms (for example, rods, tubes and profile shapes) and articles (for example, discs and rings), of unvulcanised rubber
117.	4007	Vulcanised rubber thread and cord, other than latex rubber thread
118.	4008	Plates, sheets, strip, rods and profile shapes, of vulcanised rubber other than hard rubber
119.	4009	Tubes, pipes and hoses, of vulcanised rubber other than hard rubber, with or without their fittings (for example, joints, elbows, flanges)
120.	4010	Conveyor or transmission belts or belting, of vulcanised rubber
121.	4011	Rear Tractor tyres and rear tractor tyre tubes
122.	4014	Hygienic or pharmaceutical articles (including teats), of vulcanised rubber other than hard rubber, with or without fittings of hard rubber; such as Hot water bottles, Ice bags [other than Sheath contraceptives, Rubber contraceptives, male (condoms), Rubber contraceptives, female (diaphragms), such as cervical caps]
123.	4015	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanised rubber other than hard rubber [other than Surgical gloves]
124.	4202	School satchels and bags other than of leather or composition leather
125.	4202 12 10	Toilet cases
126.	4202 22 10	Hand bags and shopping bags, of artificial plastic material
127.	4202 22 20	Hand bags and shopping bags, of cotton
128.	4202 22 30	Hand bags and shopping bags, of jute
129.	4202 22 40	Vanity bags
130.	4202 29 10	Handbags of other materials excluding wicker work or basket work
131.	4301	Raw furskins (including heads, tails, paws and other pieces or cuttings, suitable for furriers' use), other than raw hides and skins of heading 4101, 4102 or 4103.
132.	4302	Tanned or dressed furskins (including heads, tails, paws and other pieces or cuttings), unassembled, or assembled (without the addition of other materials) other than those of heading 4303

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
133.	4304	Artificial fur and articles thereof
134.	4403	Wood in the rough
135.	4407	Wood sawn or chipped
136.	4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm [other than for match splints]
137.	4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or end-jointed
138.	44 or any Chapter	Resin bonded bamboo mat board, with or without veneer in between
139.	44 or any Chapter	Bamboo flooring tiles
140.	4419	Tableware and Kitchenware of wood
141.	4501	Waste cork; crushed, granulated or ground cork
142.	4502	Natural cork, debacked or roughly squared, or in rectangular (including square) blocks, plates, sheets or strip (including sharp-edged blanks for corks or stoppers)
143.	4503	Articles of natural cork such as Corks and Stoppers, Shuttlecock cork bottom
144.	4504	Agglomerated cork (with or without a binding substance) and articles of agglomerated cork
145.	4803	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets
146.	4806 [Except 4806 20 00, 4806 40 10]	Vegetable parchment, tracing papers and other glazed transparent or translucent papers, in rolls or sheets (other than greaseproof paper, glassine paper)
147.	4809	Carbon paper, self-copy paper and other copying or transfer papers (including coated or impregnated paper for duplicator stencils or offset plates), whether or not printed, in rolls or sheets

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
148.	4811	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 4803, 4809 or 4810 [Other than aseptic packaging paper]
149.	4812	Filter blocks, slabs and plates, of paper pulp
150.	4813	Cigarette paper, whether or not cut to size or in the form of booklets or tubes
151.	4816	Carbon paper, self-copy paper and other copying or transfer papers (other than those of heading 4809), duplicator stencils and offset plates, of paper, whether or not put up in boxes
152.	4817 [Except 4817 30]	Envelopes, letter cards, plain postcards and correspondence cards, of paper or paperboard; [other than boxes, pouches, wallets and writing compendiums, of paper or paperboard, containing an assortment of paper stationery including writing blocks]
153.	4818	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, table cloths, serviettes, napkins for babies, tampons, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, or paper pulp, paper, cellulose wadding or webs of cellulose fibres
154.	4820	Registers, account books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, blotting-pads, binders (loose-leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationary, of paper or paperboard; and book covers, of paper or paperboard [other than note books and exercise books]
155.	4821	Paper or paperboard labels of all kinds, whether or not printed
156.	4822	Bobbins, spools, cops and similar supports of paper pulp, paper or paperboard (whether or not perforated or hardened)
157.	4823	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres [other than paper pulp moulded trays, Braille paper]
158.	5401	Sewing thread of manmade filaments, whether or not put up for retail sale
159.	5402, 5404, 5406	All synthetic filament yarn such as nylon, polyester, acrylic, etc.

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
160.	5403, 5405, 5406	All artificial filament yarn such as viscose rayon, Cuprammonium, etc.
161.	5501, 5502	Synthetic or artificial filament tow
162.	5503, 5504, 5506, 5507	Synthetic or artificial staple fibres
163.	5505	Waste of manmade fibres
164.	5508	Sewing thread of manmade staple fibres
165.	5509, 5510, 5511	Yarn of manmade staple fibres
166.	6401	Waterproof footwear with outer soles and uppers of rubber or of plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes
167.	6402	Other footwear with outer soles and uppers of rubber or plastics
168.	6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather
169.	6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials
170.	6405	Other footwear
171.	6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable in-soles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof
172.	6501	Hat-forms, hat bodies and hoods of felt, neither blocked to shape nor with made brims; plateaux and manchons (including slit manchons), of felt
173.	6502	Hat-shapes, plaited or made by assembling strips of any material, neither blocked to shape, nor with made brims, nor lined, nor trimmed
174.	6504 00 00	Hats and other headgear, plaited or made by assembling strips of any material, whether or not lined or trimmed
175.	6505	Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed
176.	6506	Other headgear, whether or not lined or trimmed
177.	6507	Head-bands, linings, covers, hat foundations, hat frames, peaks and chinstraps, for headgear

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
178.	6804	Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated nllatural or artificial abrasives, or of ceramics, with or without parts of other materials
179.	6805	Natural or artificial abrasive powder or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up
180.	6806	Slag wool, rock wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat-insulating, sound-insulating or sound-absorbing mineral materials, other than those of heading 6811 or 6812 or chapter 69
181.	6810	Pre cast Concrete Pipes
182.	6811	Articles of asbestos-cement, of cellulose fibre-cement or the like
183.	6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil meals or similar siliceous earths
184.	6903	Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, supports, cupels, tubes, pipes, sheaths and rods), other than those of siliceous fossil meals or of similar siliceous earths
185.	6906	Salt Glazed Stone Ware Pipes
186.	6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china
187.	6912	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china [other than Earthen pot and clay lamps]
188.	7001	Cullet and other waste and scrap of glass; glass in the mass
189.	7002	Glass in balls (other than microspheres of heading 70.18), rods or tubes, unworked
190.	7010	Carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass
191.	7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
192.	7015	Clock or watch glasses and similar glasses, glasses for non-corrective spectacles, curved, bent, hollowed or the like, not optically worked; hollow glass spheres and their segments, for the manufacture of such glasses
193.	7017	Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated
194.	7018	Imitation pearls, imitation precious or semi-precious stones and similar glass smallwares, and articles thereof other than imitation jewellery; glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitaion jewelery; glass microsphers not exceeding 1 mm in diameter
195.	7019	Glass fibres (including glass wool) and articles thereof (for example, yarn, woven fabrics)
196.	7201	Pig iron and spiegeleisen in pigs, blocks or other primary forms
197.	7202	Ferro-alloys
198.	7203	Ferrous products obtained by direct reduction of iron ore and other spongy ferrous products, in lumps, pellets or similar forms; iron having a minimum purity by weight of 99.94%, in lumps, pellets or similar forms
199.	7204	Ferrous waste and scrap; remelting scrap ingots of iron or steel
200.	7205	Granules and powders, of pig iron, spiegeleisen, iron or steel
201.	7206	Iron and non-alloy steel in ingots or other primary forms (excluding iron of heading 7203)
202.	7207	Semi-finished products of iron or non-alloy steel
203.	7208 to 7212	All flat-rolled products of iron or non-alloy steel
204.	7213 to 7215	All bars and rods, of iron or non-alloy steel
205.	7216	Angles, shapes and sections of iron or non-alloy steel
206.	7217	Wire of iron or non-alloy steel
207.	7218	Stainless steel in ingots or other primary forms; semi-finished products of stainless steel
208.	7219, 7220	All flat-rolled products of stainless steel
209.	7221, 7222	All bars and rods, of stainless steel
210.	7223	Wire of stainless steel
211.	7224	Other alloy steel in ingots or other primary forms; semi-finished products of other alloy steel
212.	7225, 7226	All flat-rolled products of other alloy steel
213.	7227, 7228	All bars and rods of other alloy steel.

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
214.	7229	Wire of other alloy steel
215.	7301	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements; welded angles, shapes and sections, of iron or steel
216.	7302	Railway or tramway track construction material of iron or steel, the following: rails, check-rails and rack rails, switch blades, crossing frogs, point rods and other crossing pieces, sleepers (cross-ties), fish-plates, chairs, chair wedges, sole plates (base plates), rail clips bedplates, ties and other material specialized for jointing or fixing rails
217.	7303	Tubes, pipes and hollow profiles, of cast iron
218.	7304	Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel
219.	7305	Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross sections, the external diameter of which exceeds 406.4 mm, of iron or steel
220.	7306	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel
221.	7307	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel
222.	7308	Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges and bridge sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, and shutters, balustrades, pillars, and columns), of iron or steel; plates, rods, angles, shapes, section, tubes and the like, prepared for using structures, of iron or steel [other than transmission towers]
223.	7309	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
224.	7310	Tanks, casks, drums, cans, boxes and similar containers, for any material (other than compressed or liquefied gas), of iron or steel, of a capacity not exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
225.	7311	Containers for compressed or liquefied gas, of iron or steel
226.	7312	Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
227.	7313	Barbed wire of iron or steel; twisted hoop or single flat wire, barbed or not, and loosely twisted double wire, of a kind used for fencing, of iron or steel
228.	7314	Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel
229.	7315	Chain and parts thereof, of iron or steel falling under 7315 20, 7315 81, 7315, 82, 7315 89, 7315 90
230.	7316	Anchors, grapnels and parts thereof, of iron or steel
231.	7317	Nails, tacks, drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material, but excluding such articles with heads of copper
232	7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of iron or steel
233.	7319	Sewing needles, knitting needles, bodkins, crochet hooks, embroidery stilettos and similar articles, for use in the hand, of iron or steel; safety pins and other pins of iron or steel, not elsewhere specified or included
234.	7320	Springs and leaves for springs, of iron and steel
235.	7321	LPG stoves
236.	7323	Iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel
237.	7325	Other cast articles of iron or steel; such as Grinding balls and similar articles for mills, Rudders for ships or boats, Drain covers, Plates and frames for sewage water or similar system
238.	7326	Other articles of iron and steel, forged or stamped, but not further worked; such as Grinding balls and similar articles for mills, articles for automobiles and Earth moving implements, articles of iron or steel Wire, Tyre bead wire rings intended for use in the manufacture of tyres for cycles and cycle-rickshaws, Belt lacing of steel, Belt fasteners for machinery belts, Brain covers, plates, and frames for sewages, water or similar system, Enamelled iron ware (excluding utensil & sign board), Manufactures of stainless steel (excluding utensils), Articles of clad metal
239.	7401	Copper mattes; cement copper (precipitated copper)
240.	7402	Unrefined copper; copper anodes for electrolytic refining
241.	7403	Refined copper and copper alloys, unwrought
242.	7404	Copper waste and scrap

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
243.	7405	Master alloys of copper
244.	7406	Copper powders and flakes
245.	7407	Copper bars, rods and profiles
246.	7408	Copper wir
247.	7409	Copper plates, sheets and strip, of a thickness exceeding 0.12.5 mm
248.	7410	Copper foils
249.	7411	Copper tubes and pipes
250.	7412	Copper tube or pipe fittings (for example, couplings, elbows, sleeves)
251.	7413	Stranded wires and cables
252.	7415	Nails, tacks, drawing pins, staples (other than those of heading 83.05) and similar articles, of copper or of iron or steel with heads of copper; screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers (including spring washers) and similar articles, of copper
253.	7419 91 00	Metal castings
254.	7501	Nickel mattes, nickel oxide sinters and other intermediate products of nickel metallurgy
255.	7502	Unwrought nickel
256.	7503	Nickel waste and scrap
257.	7504	Nickel powders and flakes
258.	7505	Nickel bars, rods, profiles and wire
259.	7506	Nickel plates, sheets, strip and foil
260.	7507	Nickel tubes, pipes and tube or pipe fittings (for example, couplings, elbows, sleeves)
261.	7508	Other articles of nickel
262.	7601	Aluminium alloys; such as Ingots, Billets, Wire-bars, Wire-rods
263.	7602	Aluminium waste and scrap
264.	7603	Aluminium powders and flakes
265.	7604	Aluminium bars, rods and profiles
266.	7605	Aluminium wire
267.	7606	Aluminium plates, sheets and strip, of a thickness exceeding 0.2 mm

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
268.	7607	Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm
269.	7608	Aluminium tubes and pipes
270.	7609	Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)
271.	7610 [Except 7610 10 00]	Aluminium structures (excluding prefabricated buildings of heading 94.06 and doors, windows and their frames and thresholds for doors under 7610 10 00) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, balustrades, pillars and columns); aluminium plates. rods, profiles, tubes and the like, prepared for use in structures
272.	7611	Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment
273.	7612	Aluminium casks, drums, cans, boxes, etc.
274.	7613	Aluminium containers for compressed or liquefied gas
275.	7614	Stranded wires and cables
276.	7616	Other articles of aluminium
277.	7801	Unwrought lead
278.	7802	Lead waste and scrap
279.	7804	Lead plates, sheets, strip and foil; lead powders and flakes
280.	7806	Other articles of lead (including sanitary fixtures and Indian lead seals)
281.	7901	Unwrought zinc
282.	7902	Zinc waste and scrap
283.	7903	Zinc dust, powders and flakes
284.	7904	Zinc bars, rods, profiles and wire
285.	7905	Zinc plates, sheets, strip and foil
286.	7907	Other articles of zinc including sanitary fixtures
287.	8001	Unwrought tin
288.	8002	Tin waste and scrap
289.	8003	Tin bars, rods, profiles and wire

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
290.	8007	Other articles of tin
291.	8101 to 8112	Other base metals, namely, Tungsten, Molybdenum, Tantalum, Magnesium, Cobalt mattes, and other intermediate products of cobalt metallurgy, Bismuth, Cadmium, Titanium, Zirconium, Antimony, Manganese, Beryllium, chromium, germanium, vanadium, gallium, hafnium, indium, niobium (columbium), rhenium and thallium, and articles thereof, including waste and scrap
292.	8113	Cermets and articles thereof, including waste and scrap
293.	8202	Hand saws; blades for saws of all kinds (including slitting, slotting or toothless saw blades)
294.	8203	Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe-cutters, bolt croppers, perforating punches and similar hand tools
295.	8204	Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); interchangeable spanner sockets, with or without handles
296.	8205	Hand tools (including glaziers' diamonds), not elsewhere specified or included; blow lamps; vices, clamps and the like, other than accessories for and parts of, machine-tools or water-jet cutting machines; anvils; portable forges; hand or pedal-operated grinding wheels with frameworks
297.	8206	Tools of two or more of the headings 8202 to 8205, put up in sets for retail sale
298.	8207	Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools
299.	8208	Knives and cutting blades, for machines or for mechanical appliances
300.	8209	Plates, sticks, tips and the like for tools, unmounted, of cermets
301.	8210 00 00	Hand-operated mechanical appliances, weighing 10 kg or less, used in the preparation, conditioning or serving of food or drink
302.	8213 00 00	Scissors, tailors' shears and similar shears, and blades therefor
303.	8301	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
304.	8306	Bells, gongs and the like, non-electric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal
305.	8307	Flexible tubing of base metal, with or without fittings
306.	8308	Clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewellery, wrist watches, books, awnings, leather goods, travel goods or saddlery or for other made up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base metal
307.	8309	Stoppers, caps and lids (including crown corks, screw caps and pouring stoppers), capsules for bottles, threaded bungs, bung covers, seals and other packing accessories, of base metal
308.	8311	Wire, rods, tubes, plates, electrodes and similar products, of base metal or of metal carbides, coated or cored with flux material, of a kind used for soldering, brazing, welding or deposition of metal or of metal carbides; wire and rods, of agglomerated base metal powder, used for metal spraying
309.	8401	Nuclear reactors; machinery and apparatus for isotopes separation
310.	8402	Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers
311.	8403	Central heating boilers other than those of heading 8402
312.	8404	Auxiliary plant for use with boilers of heading 8402 or 8403 (for example, economisers, super-heaters, soot removers, gas recoverers); condensers for steam or other vapour power units
313.	8405	Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers
314.	8406	Steam turbines and other vapour turbines
315.	8410	Hydraulic turbines, water wheels, and regulators therefor
316.	8411	Turbo-jets, turbo-propellers and other gas turbines - turbo-jets
317.	8412	Other engines and motors (Reaction engines other than turbo jets, Hydraulic power engines and motors, Pneumatic power engines and motors, other, parts) [other than wind turbine or engine]
318.	8416	Furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
319.	8417	Industrial or laboratory furnaces and ovens, including incinerators, non-electric
320.	8419 20	Medical, surgical or laboratory sterilisers
321.	8420	Calendering or other rolling machines, other than for metals or glass, and cylinders therefor
322.	8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases
323.	8422 20 00, 8422 30 00, 8422 40 00, 8522 90 [other than 8422 11 00, 8422 19 00]	Machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; other packing or wrapping machinery (including heat-shrink wrapping machinery); machinery for aerating beverages [other than dish washing machines]
324.	8423	Weighing machinery (excluding balances of a sensitivity of 5 centigrams or better), including weight operated counting or checking machines; weighing machine weights of all kinds [other than electric or electronic weighing machinery]
325.	8424	Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than fire extinguishers, whether or not charged]
326.	8425	Pulley tackle and hoists other than skip hoists; winches and capstans; jacks
327.	8426	Ship's derricks; cranes including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane
328.	8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430
329.	8435	Presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages
330.	8438	Machinery, not specified or included elsewhere in this Chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils
331.	8439	Machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard
332.	8440	Book-binding machinery, including book-sewing machines
333.	8441	Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
334.	8442	Machinery, apparatus and equipment (other than the machines of headings 8456 to 8465) for preparing or making plates, printing components; plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished)
335.	8443	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 84.42; Printers [other than machines which perform two or more of the functions of printing, copying or facsimile transmission] capable of connecting to an automatic data processing machine or to a network printers [other than copying machines, facsimile machines]; parts and accessories thereof [other than ink cartridges with or without print head assembly and ink spray nozzle]
336.	8444	Machines for extruding, drawing, texturing or cutting man-made textile materials
337.	8445	Machines for preparing textile fibres; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding (including weft-winding) machines and machines for preparing textile yarns for use on the machines of heading 8446 or 8447
338.	8446	Weaving machines (looms)
339.	8447	Knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting
340.	8448	Auxiliary machinery for use with machines of heading 84.44, 84.45, 84.46 or 84.47 (for example, dobbies, Jacquards, automatic stop motions, shuttle changing mechanisms); parts and accessories suitable for use solely or principally with the machines of this heading or of heading 8444, 8445,8446 or 8447 (for example, spindles and spindles flyers, card clothing, combs, extruding nipples, shuttles, healds and heald frames, hosiery needles)
341.	8449	Machinery for the manufacture or finishing of felt or nonwovens in the piece or in shapes, including machinery for making felt hats; blocks for making hats
342.	8451	Machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor covering such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
343.	8453	Machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides, skins or leather, other than sewing machines
344.	8454	Converters, ladles, ingot moulds and casting machines, of a kind used in metallurgy or in metal foundries
345.	8455	Metal-rolling mills and rolls therefor
346.	8456	Machine-tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes
347.	8457	Machining centres, unit construction machines (single station) and multi-station transfer machines, for working metal
348.	8458	Lathes (including turning centres) for removing metal
349.	8459	Machine-tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centres) of heading 8458
350.	8460	Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal, or cermets by means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines of heading 8461
351.	8461	Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off and other machine-tools working by removing metal or cermets, not elsewhere specified or included
352.	8462	Machine-tools (including presses) for working metal by forging, hammering or die-stamping; machine-tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching; presses for working metal or metal carbides, not specified above
353.	8463	Other machine-tools for working metal, or cermets, without removing material
354.	8464	Machine-tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass
355.	8465	Machine-tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
356.	8466	Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465 including work or tool holders, self-opening dieheads, dividing heads and other special attachments for the machines; tool holders for any type of tool, for working in the hand
357.	8467	Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor
358.	8468	Machinery and apparatus for soldering, brazing or welding, whether or not capable of cutting, other than those of heading 8512.5; gas-operated surface tempering machines and appliances
359.	8470	Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers
360.	8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included
361.	8472	Perforating or stapling machines (staplers), pencil sharpening machines
362.	8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8470 to 8472
363.	8474	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand
364.	8475	Machines for assembling electric or electronic lamps, tubes or valves or flashbulbs, in glass envelopes; machines for manufacturing or hot working glass or glassware
365.	8477	Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this Chapter
366.	8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter [other than Passenger boarding bridges of a kind used in airports (8479 71 00) and other (8479 79 00)]

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
367.	8480	Moulding boxes for metal foundry; mould bases; moulding patterns; moulds for metal (other than ingot moulds), metal carbides, glass, mineral materials, rubber or plastics
368.	8481	Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves
369.	8482	Ball bearing, Roller Bearings
370.	8486	Machines and apparatus of a kind used solely or principally for the manufacture of semiconductor boules or wafers, semiconductor devices, electronic integrated circuits or flat panel displays; machines and apparatus specified in Note 9 (C) to this Chapter; parts and accessories
371.	8487	Machinery parts, not containing electrical connectors, insulators, coils, contacts or other electrical features not specified or included elsewhere in this chapter
372.	8501	Electric motors and generators (excluding generating sets)
373.	8502	Electric generating sets and rotary converters
374.	8503	Parts suitable for use solely or principally with the machines of heading 8501 or 8502
375.	8504	Transformers Industrial Electronics; Electrical Transformer; Static Convertors (UPS)
376.	8505	Electro-magnets; permanent magnets and articles intended to become permanent magnets after magnetisation; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic couplings, clutches and brakes; electro-magnetic lifting heads
377.	8514	Industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss
378.	8515	Electric (including electrically heated gas), laser or other light or photo beam, ultrasonic, electron beam, magnetic pulse or plasma arc soldering, brazing or welding machines and apparatus, whether or not capable of cutting; electric machines and apparatus for hot spraying of metals or cermets
379.	8517	Telephone sets; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
380.	8518	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures [other than single loudspeakers, mounted in their enclosures]; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers;
381.	8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner
382.	8523	Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, including matrices and masters for the production of discs, but excluding products of Chapter 37
383.	8525	Closed-circuit television (CCTV)
384.	8528	Computer monitors not exceeding 17 inches, Set top Box for Television (TV)
385.	8532	Electrical capacitors, fixed, variable or adjustable (pre-set)
386.	8533	Electrical resistors (including rheostats and potentiometers), other than heating resistors
387.	8534 00 00	Printed Circuits
388.	8535	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes), for a voltage exceeding 1,000 volts
389.	8538	Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537
390.	8539	Electrical Filaments or discharge lamps
391.	8540	Thermionic, cold cathode or photo-cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode-ray tubes, television camera tubes)
392.	8541	Diodes, transistors and similar semi-conductor devices; photosensitive semi-conductor devices; light-emitting diodes (LED); mounted piezo-electric crystals
393.	8542	Electronic integrated circuits
394.	8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this Chapter
395.	8544	Winding Wires; Coaxial cables; Optical Fiber
396.	8545	Carbon electrodes

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
397.	8546	Electrical insulators of any material
398.	8548	Waste and scrap of primary cells, primary batteries and electric accumulators; spent primary cells, spent primary batteries and spent electric accumulators; electrical parts of machinery or apparatus, not specified or included elsewhere in this Chapter
399.	8609	Containers (including containers for the transport of fluids) specially designed and equipped for carriage by one or more modes of transport [including refrigerated containers]
400.	8703	Cars for physically handicapped persons, subject to the following conditions: a) an officer not below the rank of Deputy Secretary to the Government of India in the Department of Heavy Industries certifies that the said goods are capable of being used by the physically handicapped persons; and b) the buyer of the car gives an affidavit that he shall not dispose of the car for a period of five years after its purchase.
401.	8704	Refrigerated motor vehicles
402.	8708	Following parts of tractors namely: a. Rear Tractor wheel rim, b. tractor centre housing, c. tractor housing transmission, d. tractor support front axle
403.	8715	Baby carriages and parts thereof
404.	8801	Balloons and dirigibles, gliders and other non-powered aircraft
405.	8804	Parachutes (including dirigible parachutes and paragliders) and rotochutes; parts thereof and accessories thereto and parts thereof
406.	8805	Aircraft launching gear, deck arrestor or similar gear; ground flying trainers and parts thereof
407.	8908 00 00	Vessels and other floating structures for breaking up
408.	9001	Optical fibres and optical fibre bundles; optical fibre cables other than those of heading 8544; sheets and plates of polarising material; prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked
409.	9002	Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked [other than intraocular lens]
410.	9003	Frames and mountings for spectacles, goggles or the like, and parts thereof

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
411.	9004	Spectacles [other than corrective]; goggles and the like, corrective, protective or other
412.	9016	Balances of a sensitivity of 5 cg or better, with or without weights [other than electric or electronic balances]
413.	9017	Instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, callipers), not specified or included elsewhere in the chapter
414.	9024	Machines and appliances for testing the hardness, strength, compressibility, elasticity or other mechanical properties of materials (for example, metals, wood, textiles, paper, plastics)
415.	9025	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments
416.	9026	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 9014, 9015, 9028 or 9032
417.	9027	Instruments and apparatus for physical or chemical analysis (for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and appratus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes
418.	9028	Gas, liquid or electricity supply or production meters, including calibrating meters therefor
419.	9029	Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading 9014 or 9015; stroboscopes
420.	9030	Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations
421.	9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter; profile projectors
422.	9032	Automatic regulating or controlling instruments and apparatus
423.	9033	Parts and accessories (not specified or included elsewhere in this Chapter) for machines, appliances, instruments or apparatus of Chapter 90
424.	9103	Clocks with watch movements, excluding clocks of heading 9104

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
425.	9105	Other clocks
426.	9109	Clock movements, complete and assembled
427.	9114	Other clock parts
428.	9110	Complete clock movements, unassembled or partly assembled (movement sets); incomplete clock movements, assembled; rough clock movements
429.	9112	Clock cases, and parts thereof
430.	9301	Military weapons other than revolvers, pistols
431.	9303	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns)
432.	9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307
433.	9305	Parts and accessories of articles of headings 9301 to 9304
434.	9306	Bombs, grenades, torpedoes, mines, missiles, and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads
435.	9307	Swords, cut lasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths therefor
436.	9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles
437.	9403	Bamboo furniture
438.	9404	Coir mattresses, cotton pillows, mattress and quilts
439.	9406	Prefabricated buildings
440.	9503	Electronic Toys like tricycles, scooters, pedal cars etc. (including parts and accessories thereof)
441.	9506	Swimming pools and padding pools
442.	9606 21 00, 9606 22 00, 9606 29, 9606 30	Buttons, of plastics not covered with the textile material, of base metals, buttons of coconut shell, button blanks

Schedule III – 9%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
443.	9603 [other than 9603 10 00]	Brushes (including brushes constituting parts of machines, appliances or vehicles), hand operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees) [other than brooms and brushes, consisting of twigs or other vegetable materials bound together, with or without handles]
444.	9604 00 00	Hand sieves and hand riddles
445.	9605	Travel sets for personal toilet, sewing or shoe or clothes cleaning
446.	9607	Slide fasteners and parts thereof
447.	9608	Fountain pens, stylograph pens and other pens
448.	9610 00 00	Boards, with writing or drawing surface, whether or not framed
449.	9612	Typewriter or similar ribbons, inked or otherwise prepared for giving impressions, whether or not on spools or in cartridges; ink-pads, whether or not inked, with or without boxes
450.	9620 00 00	Monopods, bipods, tripods and similar articles
451.	9801	All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified: (1) industrial plant, (2) irrigation project, (3) power project, (4) mining project, (5) project for the exploration for oil or other minerals, and (6) such other projects as the Central Government may, having regard to the economic development of the country notify in the Official Gazette in this behalf; and spare parts, other raw materials (including semi-finished materials of consumable stores) not exceeding 10% of the value of the goods specified above, provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in (1) to (6) above.
452.	9802	Laboratory chemicals
453.	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	1703	Molasses
2.	1704	Chewing gum / bubble gum and white chocolate, not containing cocoa
3.	1804	Cocoa butter, fat and oil
4.	1805	Cocoa powder, not containing added sugar or sweetening matter
5.	1806	Chocolates and other food preparations containing cocoa
6.	1901 90 [other than 1901 10, 1901 20 00]	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis not elsewhere specified or included [other than preparations for infants or young children, put up for retail sale and mixes and doughs for the preparation of bakers' wares of heading 1905]
7.	1905 32	Waffles and wafers coated with chocolate or containing chocolate
8.	2101 11, 2101 12 00	Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee
9.	2106	Food preparations not elsewhere specified or included i.e. Protein concentrates and textured protein substances, Sugar-syrups containing added flavouring or colouring matter, not elsewhere specified or included; lactose syrup; glucose syrup and malto dextrine syrup, Compound preparations for making non-alcoholic beverages, Food flavouring material, Churna for pan, Custard powder
10.	2106 90 20	Pan masala
11.	2202 90 90	Other non-alcoholic beverages
12.	2202 10	All goods [including aerated waters], containing added sugar or other sweetening matter or flavoured
13.	2401	Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]
14.	2402	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
15.	2403	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences [including biris]

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
16.	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
17.	2516 12 00	Granite, other than blocks
18.	2523	Portland cement, aluminous cement, slag cement, super sulphate cement and similar hydraulic cements, whether or not coloured or in the form of clinkers
19.	2710	Avgas
20.	3208	Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; solutions as defined in Note 4 to this Chapter
21.	3209	Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium
22.	3210	Other paints and varnishes (including enamels, lacquers and distempers); prepared water pigments of a kind used for finishing leather
23.	3213	Artists', students' or signboard painters' colours, modifying tints, amusement colours and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings
24.	3214	Glaziers' putty, grafting putty, resin cements, caulking compounds and other mastics; painters' fillings; non- refractory surfacing preparations for facades, indoor walls, floors, ceilings or the like
25.	3303	Perfumes and toilet waters
26.	3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations [other than kajal, Kumkum, Bindi, Sindur, Alta]
27.	3305 [other than 3305 9011, 3305 90 19]	All goods, i.e. preparations for use on the hair such as Shampoos; Preparations for permanent waving or straightening; Hair lacquers; Brilliantines (spirituous); Hair cream, Hair dyes (natural, herbal or synthetic) [other than Hair oil]
28.	3306 [other than 3306 10 10, 3306 10 20]	Preparations for oral or dental hygiene, including and powders; yarn used to clean between the teeth (dental floss), in individual retail packages [other than dentifrices in powder or paste from (tooth powder or toothpaste)]

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
29.	3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorisers, whether or not perfumed or having disinfectant properties; such as Pre-shave, shaving or after-shave Preparations, Shaving cream, Personal deodorants and antiperspirants
30.	3401 30	Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent
31.	3402	Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401
32.	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals
33.	3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404
34.	3407	Modelling pastes, including those put up for children's amusement
35.	3602	Prepared explosives, other than propellant powders; such as Industrial explosives
36.	3604	Fireworks, signalling flares, rain rockets, fog signals and other pyrotechnic articles
37.	3606	Ferro-cerium and other pyrophoric alloys in all forms; articles of combustible materials as specified in Note 2 to this Chapter; such as liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters
38.	3811	Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils
39.	3813	Preparations and charges for fire-extinguishers; charged fire-extinguishing grenades
40.	3814	Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
41.	3819	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals
42.	3820	Anti-freezing preparations and prepared de-icing fluids
43.	3918	Floor coverings of plastics, whether or not self-adhesive, in rolls or in form of tiles; wall or ceiling coverings of plastics
44.	3922	Baths, shower baths, sinks, wash basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics
45.	3926 [other than 3926 40 11, 3926 90 10]	Other articles of plastics and articles of other materials of headings 3901 to 3914 [other than bangles of plastic, PVC Belt Conveyor, plastic beads and plastic tarpaulins]
46.	4011	New pneumatic tyres, of rubber [other than of a kind used on/ in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyres]
47.	4012	Retreaded or used tyres and flaps
48.	4013	Inner tubes of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyre tubes]
49.	4016 [other than 4016 92 00]	Other articles of vulcanised rubber other than hard rubber (other than erasers)
50.	4017	Hard rubber (for example ebonite) in all forms, including waste and scrap; articles of hard rubber
51.	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material
52.	4202	Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, to-bacco- pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper [other than School satchels and bags other than of leather or composition leather, Toilet cases, Hand bags and shopping bags, of artificial plastic material, of cotton, or of jute, Vanity bags, Handbags of other materials excluding wicker work or basket work]

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
53.	4203	Articles of apparel and clothing accessories, of leather or of composition leather
54.	4205	Other articles of leather or of composition leather
55.	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons
56.	4303	Articles of apparel, clothing accessories and other articles of furskin
57.	4304	Articles of artificial fur
58.	4410	Particle board, Oriented Strand Board (OSB) and similar board (for example, wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances, other than specified boards
59.	4411	Fibre board of wood or other ligneous materials, whether or not bonded with resins or other organic substances, other than specified boards
60.	4412	Plywood, veneered panels and similar laminated wood
61.	4413	Densified wood, in blocks, plates, strips, or profile shapes
62.	4414	Wooden frames for paintings, photographs, mirrors or similar objects
63.	4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes
64.	4421	Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware
65.	4814	Wall paper and similar wall coverings; window transparencies of paper
66.	6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit
67.	6703	Wool or other animal hair or other textile materials, prepared for use in making wigs or the like
68.	6704	Wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of textile materials; articles of human hair not elsewhere specified or included
69.	6801	Setts, curbstones and flagstones, of natural stone (except slate)
70.	6802	Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate); of marble, travertine and alabaster, of Granite, of Other calcareous stone

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
71.	6803	Worked slate and articles of slate or of agglomerated slate
72.	6807	Articles of asphalt or of similar material (for example, petroleum bitumen or coal tar pitch)
73.	6808	Panels, boards, tiles, blocks and similar articles of vegetable fibre, of straw or of shavings, chips, particles, sawdust or other waste, of wood, agglomerated with cement, plaster or other mineral binders
74.	6809	Articles of plaster or of compositions based on plaster; such as Boards, sheets, panels, tiles and similar articles, not ornamented
75.	6810	Articles of cement, of concrete or of artificial stone, whether or not reinforced; such as Tiles, flagstones, bricks and similar articles, Building blocks and bricks, Cement bricks, Prefabricated structural components for Building or civil engineering, Prefabricated structural components for building or civil engineering
76.	6812	Fabricated asbestos fibres; mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate; articles of such mixtures or of asbestos (for example, thread, woven fabric, clothing, headgear, footwear, gaskets), whether or not reinforced, other than goods of heading 6811 or 6813
77.	6813	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other materials
78.	6814	Worked mica and articles of mica, including agglomerated or reconstituted mica, whether or not on a support of paper, paperboard or other materials
79.	6815	Articles of stone or of other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat), not elsewhere specified or included
80.	6901	Blocks, tiles and other ceramic goods of siliceous fossil meals (for example, kieselguhr, tripolite or diatomite) or of similar siliceous earths
81.	6904	Ceramic flooring blocks, support or filler tiles and the like
82.	6905	Chimney-pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods
83.	6906	Ceramic pipes, conduits, guttering and pipe fittings
84.	6907	Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics
85.	6909	Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
86.	6910	Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures
87.	6913	Statuettes and other ornamental ceramic articles
88.	6914	Other ceramic articles
89.	7003	Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
90.	7004	Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
91.	7005	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
92.	7006 00 00	Glass of heading 70.03, 70.04 or 70.05, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials
93.	7007	Safety glass, consisting of toughened (tempered) or laminated glass
94.	7008	Multiple-walled insulating units of glass
95.	7009	Glass mirrors, whether or not framed, including rear-view mirrors
96.	7011	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like
97.	7014	Signalling glassware and optical elements of glass (other than those of heading 7015), not optically worked
98.	7016	Paving blocks, slabs, bricks, squares, tiles and other articles of pressed or moulded glass, whether or not wired, of a kind used for building or construction purposes; glass cubes and other glass smallwares, whether or not on a backing, for mosaics or similar decorative purposes; leaded lights and the like; multi-cellular or foam glass in blocks, panels, plates, shells or similar forms
99.	7020	Other articles of glass [other than Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns]
100.	7321	Stoves [other than kerosene stove and LPG stoves], ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
101.	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel
102.	7324	Sanitary ware and parts thereof of iron and steel
103.	7418	All goods other than utensils i.e. sanitary ware and parts thereof of copper
104.	7419	Other articles of copper [including chain and parts thereof under 7419 10 and other articles under 7419 99] but not including metal castings under 7419 91 00
105.	7610 10 00	Doors, windows and their frames and thresholds for doors
106.	7615	All goods other than utensils i.e. sanitary ware and parts thereof
107.	8212	Razors and razor blades (including razor blade blanks in strips)
108.	8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives,); manicure or pedicure sets and instruments (including nail files) [other than paper knives, pencil sharpeners and blades thereof]
109.	8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal
110.	8303	Armoured or reinforced safes, strong-boxes and doors and safe deposit lockers for strong-rooms, cash or deed boxes and the like, of base metal
111.	8304	Filing cabinets, card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment, of base metal, other than office furniture of heading 9403
112.	8305	Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal
113.	8310	Sign-plates, name-plates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading 9405
114.	8407	Spark-ignition reciprocating or rotary internal combustion piston engine

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
115.	8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines)
116.	8409	Parts suitable for use solely or principally with the engines of heading 8407 or 8408
117.	8413	Pumps for dispensing fuel or lubricants of the type used in filling stations or garages [8413 11], Fuel, lubricating or cooling medium pumps for internal combustion piston engines [8413 30], concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60], [other than hand pumps falling under tariff item 8413 11 10]
118.	8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters
119.	8415	Air-conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated
120.	8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 8415
121.	8419	Storage water heaters, non-electric [8419 19] (other than solar water heater and system), Pressure vessels, reactors, columns or towers or chemical storage tanks [8419 89 10], Glass lined equipment [8419 89 20], Auto claves other than for cooking or heating food, not elsewhere specified or included [8419 89 30], Cooling towers and similar plants for direct cooling (without a separating wall) by means of recirculated water [8419 89 40], Plant growth chambers and rooms and tissue culture chambers and rooms having temperature, humidity or light control [8419 89 60], Apparatus for rapid heating of semi- conductor devices , apparatus for chemical or physical vapour deposition on semiconductor wafers; apparatus for chemical vapour deposition on LCD substratus [8419 89 70]; parts [8419 90]
122.	8422	Dish washing machines, household [8422 11 00] and other [8422 19 00]
123.	8423	Electric or electronic weighing machinery (excluding balances of a sensitivity of 5 centigrams or better), including weight operated counting or checking machines; weighing machine weights of all kinds
124.	8424	Fire extinguishers
125.	8427	Fork-lift trucks; other works trucks fitted with lifting or handling equipment

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
126.	8428	Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics)
127.	8429	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers
128.	8430	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers
129.	8443	Printers which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network printers; copying machines, facsimile machines; ink cartridges with or without print head assembly and ink spray nozzle
130.	8450	Household or laundry-type washing machines, including machines which both wash and dry
131.	8472	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin sorting machines, coin counting or wrapping machines [other than Braille typewriters, electric or non-electric, Perforating or stapling machines (staplers), pencil sharpening machines]
132.	8476	Automatic goods-vending machines (for example, postage stamps, cigarette, food or beverage machines), including money changing machines
133.	8478	Machinery for preparing or making up tobacco, not specified or included elsewhere in this chapter
134.	8479	Passenger boarding bridges of a kind used in airports [8479 71 00] and other [8479 79 00]
135.	8483	Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)
136.	8484	Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals
137.	8504	Static converters (for example, rectifiers) and inductors [other than Transformers Industrial Electronics; Electrical Transformer; Static Convertors (UPS)]

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
138.	8506	Primary cells and primary batteries
139.	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square)
140.	8508	Vacuum cleaners
141.	8509	Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 8508
142.	8510	Shavers, hair clippers and hair-removing appliances, with self-contained electric motor
143.	8511	Electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines (for example, ignition magnetos, magneto-dynamos, ignition coils, sparking plugs and glow plugs, starter motors); generators (for example, dynamos, alternators) and cut-outs of a kind used in conjunction with such engines
144.	8512	Electrical lighting or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles
145.	8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512
146.	8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric smoothing irons; other electro-thermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545
147.	8517	ISDN System [8517 69 10], ISDN Terminal Adaptor [8517 69 20], X 25 Pads [8517 69 40]
148.	8518	Single loudspeakers, mounted in their enclosures [8518 21 00], Audio-frequency electric amplifiers [8518 40 00], Electric sound amplifier sets [8518 50 00], Parts [8518 90 00]
149.	8519	Sound recording or reproducing apparatus
150.	8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 or 8521
151.	8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video cameras recorders [other than CCTV]
152.	8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
153.	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock
154.	8528	Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receiver or sound or video recording or reproducing apparatus [other than computer monitors not exceeding 17 inches]
155.	8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528
156.	8530	Electrical signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608)
157.	8531	Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530
158.	8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, and other connectors, junction boxes), for a voltage not exceeding 1,000 volts : connectors for optical fibres optical fibres, bundles or cables
159.	8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517
160.	8539	Sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps [other than Electric filament or discharge lamps and LED lamps]
161.	8544	Insulated (including enamelled or anodised) wire, cable and other insulated electric conductors, whether or not fitted with connectors [other than Winding Wires; Coaxial cables; Optical Fiber]
162.	8545	Brushes [8545 20 00] and goods under 8545 (including arc lamp carbon and battery carbon)
163.	8547	Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for the purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
164.	8702	Motor vehicles for the transport of ten or more persons, including the driver
165.	8703	Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars [other than Cars for physically handicapped persons]
166.	8704	Motor vehicles for the transport of goods [other than Refrigerated motor vehicles]
167.	8705	Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological unit)
168.	8706	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705
169.	8707	Bodies (including cabs), for the motor vehicles of headings 8701 to 8705
170.	8708	Parts and accessories of the motor vehicles of headings 8701 to 8705 [other than specified parts of tractors]
171.	8709	Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles
172.	8710	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles
173.	8711	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars
174.	8714	Parts and accessories of vehicles of headings 8711 and 8713
175.	8716	Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof [other than Self-loading or self-unloading trailers for agricultural purposes, and Hand propelled vehicles (e.g. hand carts, rickshaws and the like); animal drawn vehicles]
176.	8802	Aircrafts for personal use
177.	8903	Yachts and other vessels for pleasure or sports; rowing boats and canoes
178.	9004	Goggles
179.	9005	Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
180.	9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539
181.	9007	Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus
182.	9008	Image projectors, other than cinematographic; photographic (other than cinematographic) enlargers and reducers
183.	9010	Apparatus and equipment for photographic (including cinematographic) laboratories, not specified or included elsewhere in this Chapter; negatoscopes; projection screens
184.	9011	Compound optical microscopes, including those for photo-micrography cinephotomicrography or microprojection
185.	9012	Microscopes other than optical microscopes; diffraction apparatus
186.	9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter
187.	9014	Direction finding compasses; other navigational instruments and appliances
188.	9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders
189.	9016	Electric or electronic balances of a sensitivity of 5 cg or better, with or without weights
190.	9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, for \ including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examinations or treatment tables, chairs and the light
191.	9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses
192.	9101	Wrist-watches, pocket-watches and other watches, including stop-watches, with case of precious metal or of metal clad with precious metal
193.	9102	Wrist-watches, pocket-watches and other watches, including stop watches, other than those of heading 9101
194.	9104	Instrument panel clocks and clocks of a similar type for vehicles, aircraft, spacecraft or vessels

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
195.	9106	Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor (for example, time registers, time-recorders)
196.	9107	Time switches with clock or watch movement or with synchronous motor
197.	9108	Watch movements, complete and assembled
198.	9110	Complete watch movements, unassembled or partly assembled (movement sets); incomplete watch movements, assembled; rough watch movements
199.	9111	Watch cases and parts thereof
200.	9112	Cases for other than clocks, and parts thereof
201.	9113	Watch straps, watch bands and watch bracelets, and parts thereof
202.	9114	Other watch parts
203.	9201	Pianos, including automatic pianos; harpsi-chords and other keyboard stringed instruments
204.	9202	Other string musical instruments (for example, guitars, violins, harps)
205.	9205	Wind musical instruments (for example, keyboard pipe organs, accordions, clarinets, trumpets, bagpipes), other than fairground organs and mechanical street organs
206.	9206 00 00	Percussion musical instruments (for example, drums, xylophones, cymbols, castanets, maracas)
207.	9207	Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions)
208.	9208	Musical boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signalling instruments
209.	9209	Parts (for example, mechanisms for musical boxes) and accessories (for example, cards, discs and rolls for mechanical instruments) of musical instruments; metronomes, tuning forks and pitch pipes of all kinds
210.	9302	Revolvers and pistols, other than those of heading 9303 or 9304
211.	9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof
212.	9403	Other furniture [other than bamboo furniture] and parts thereof

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
213.	9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered
214.	9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included
215.	9504	Video games consoles and Machines
216.	9505	Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes
217.	9506	Articles and equipment for general physical exercise, gymnastics, athletics
218.	9508	Roundabouts, swings, shooting galleries and other fairground amusements; [other than travelling circuses and travelling menageries]
219.	9601	Worked ivory, bone, tortoise-shell, horn, antlers, coral, mother-of-pearl and other animal carving material, and articles of these materials (including articles obtained by moulding)
220.	9602	Worked vegetable or mineral carving material and articles of these materials moulded or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin
221.	9611	Date, sealing or numbering stamps, and the like (including devices for printing or embossing labels), designed for operating in the hand; hand-operated composing sticks and hand printing sets incorporating such composing sticks
222.	9613	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks
223.	9614	Smoking pipes (including pipe bowls) and cigar or cigarette holders, and parts thereof
224.	9616	Scent sprays and similar toilet sprays, and mounts and heads therefor; powder-puffs and pads for the application of cosmetics or toilet preparations
225.	9617	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners
226.	9618	Tailors' dummies and other lay figures; automata and other animated displays, used for shop window dressing

Schedule IV – 14%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
227.	9804	All dutiable articles intended for personal use
228.	-	Lottery authorized by State Governments *Explanation 1.-* For the purposes of this entry, value of supply of lottery under sub-section (5) of section 15 of the Central Goods and Services Tax Act, 2017 shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher. *Explanation 2.-* (1) "Lottery authorized by State Governments" means a lottery which is authorized to be sold in State(s) other than the organising state also. (2) Organising state has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010

Schedule V – 1.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	7101	Pearls, natural or cultured, whether or not worked or graded but not strung, mounted or set; pearls, natural or cultured, temporarily strung for convenience of transport
2.	7102	Diamonds, whether or not worked, but not mounted or set [other than Non-Industrial Unworked or simply sawn, cleaved or bruted]
3.	7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport [other than Unworked or simply sawn or roughly shaped]
4.	7104	Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semi-precious stones, temporarily strung for convenience of transport [other than Unworked or simply sawn or roughly shaped]
5.	7105	Dust and powder of natural or synthetic precious or semi-precious stones
6.	7106	Silver (including silver plated with gold or platinum), unwrought or in semi-manufactured forms, or in powder form

Schedule V – 1.5%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
7.	7107	Base metals clad with silver, not further worked than semi-manufactured
8.	7108	Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form
9.	7109	Base metals or silver, clad with gold, not further worked than semi-manufactured
10.	7110	Platinum, unwrought or in semi-manufactured forms, or in powder form
11.	7111	Base metals, silver or gold, clad with platinum, not further worked than semi-manufactured
12.	7112	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal.
13.	7113	Articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal
14.	7114	Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal
15.	7115	Other articles of precious metal or of metal clad with precious metal
16.	7116	Articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed)
17.	7117	Imitation jewellery
18.	7118	Coin

Schedule VI – 0.125%		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	7102	Diamonds, non-industrial unworked or simply sawn, cleaved or bruted
2.	7103	Precious stones (other than diamonds) and semi-precious stones, unworked or simply sawn or roughly shaped
3.	7104	Synthetic or reconstructed precious or semi-precious stones, unworked or simply sawn or roughly shaped

Explanation. – For the purposes of this notification,-

(i) The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.

(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU] (Mohit Tewari) Under Secretary to the Government of India (Mohit Tewari) Under Secretary to the Government of India

Mohit Tewari
Under Secretary to the Government of India

Notification No.2/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Schedule appended to this notification, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in

the corresponding entry in column (2) of the said Schedule, from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017).

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
(1)	(2)	(3)
1.	0101	Live asses, mules and hinnies
2.	0102	Live bovine animals
3.	0103	Live swine
4.	0104	Live sheep and goats
5.	0105	Live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys and guinea fowls.
6.	0106	Other live animal such as Mammals, Birds, Insects
7.	0201	Meat of bovine animals, fresh and chilled.
8.	0202	Meat of bovine animals frozen [other than frozen and put up in unit container]
9.	0203	Meat of swine, fresh, chilled or frozen [other than frozen and put up in unit container]
10.	0204	Meat of sheep or goats, fresh, chilled or frozen [other than frozen and put up in unit container]
11.	0205	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen [other than frozen and put up in unit container]
12.	0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen [other than frozen and put up in unit container]
13.	0207	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen [other than frozen and put up in unit container]
14.	0208	Other meat and edible meat offal, fresh, chilled or frozen [other than frozen and put up in unit container]
15.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, fresh, chilled or frozen [other than frozen and put up in unit container]
16.	0209	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, salted, in brine, dried or smoked [other than put up in unit containers]

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
17.	0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal, other than put up in unit containers
18.	3	Fish seeds, prawn / shrimp seeds whether or not processed, cured or in frozen state [other than goods falling under Chapter 3 and attracting 2.5%]
19.	0301	Live fish.
20.	0302	Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304
21.	0304	Fish fillets and other fish meat (whether or not minced), fresh or chilled.
22.	0306	Crustaceans, whether in shell or not, live, fresh or chilled; crustaceans, in shell, cooked by steaming or by boiling in water live, fresh or chilled.
23.	0307	Molluscs, whether in shell or not, live, fresh, chilled; aquatic invertebrates other than crustaceans and molluscs, live, fresh or chilled.
24.	0308	Aquatic invertebrates other than crustaceans and molluscs, live, fresh or chilled.
25.	0401	Fresh milk and pasteurised milk, including separated milk, milk and cream, not concentrated nor containing added sugar or other sweetening matter, excluding Ultra High Temperature (UHT) milk
26.	0403	Curd; Lassi; Butter milk
27.	0406	Chena or paneer, other than put up in unit containers and bearing a registered brand name;
28.	0407	Birds' eggs, in shell, fresh, preserved or cooked
29.	0409	Natural honey, other than put up in unit container and bearing a registered brand name
30.	0501	Human hair, unworked, whether or not washed or scoured; waste of human hair
31.	0506	All goods i.e. Bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or gelatinised; powder and waste of these products
32.	0507 90	All goods i.e. Hoof meal; horn meal; hooves, claws, nails and beaks; antlers; etc.
33.	0511	Semen including frozen semen

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
34.	6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
35.	0701	Potatoes, fresh or chilled.
36.	0702	Tomatoes, fresh or chilled.
37.	0703	Onions, shallots, garlic, leeks and other alliaceous vegetables, fresh or chilled.
38.	0704	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
39.	0705	Lettuce (Lactuca sativa) and chicory (Cichorium spp.), fresh or chilled.
40.	0706	Carrots, turnips, salad beetroot, salsify, celeriac, radishes and similar edible roots, fresh or chilled.
41.	0707	Cucumbers and gherkins, fresh or chilled.
42.	0708	Leguminous vegetables, shelled or unshelled, fresh or chilled.
43.	0709	Other vegetables, fresh or chilled.
44.	0712	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared.
45.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split.
46.	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, fresh or chilled; sago pith.
47.	0801	Coconuts, fresh or dried, whether or not shelled or peeled
48.	0801	Brazil nuts, fresh, whether or not shelled or peeled
49.	0802	Other nuts, Other nuts, fresh such as Almonds, Hazelnuts or filberts (Coryius spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.), Areca nuts, fresh, whether or not shelled or peeled
50.	0803	Bananas, including plantains, fresh or dried
51.	0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh.
52.	0805	Citrus fruit, such as Oranges, Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, Grapefruit, including pomelos, Lemons (Citrus limon, Citrus limonum) and limes (Citrus aurantifolia, Citrus latifolia), fresh.
53.	0806	Grapes, fresh

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
54.	0807	Melons (including watermelons) and papaws (papayas), fresh.
55.	0808	Apples, pears and quinces, fresh.
56.	0809	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
57.	0810	Other fruit such as strawberries, raspberries, blackberries, mulberries and loganberries, black, white or red currants and gooseberries, cranberries, bilberries and other fruits of the genus vaccinium, Kiwi fruit, Durians, Persimmons, Pomegranates, Tamarind, Sapota (chico), Custard-apple (ata), Bore, Lichi, fresh.
58.	0814	Peel of citrus fruit or melons (including watermelons), fresh.
59.	9	All goods of seed quality
60.	0901	Coffee beans, not roasted
61.	0902	Unprocessed green leaves of tea
62.	0909	Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries [of seed quality]
63.	0910 11 10	Fresh ginger, other than in processed form
64.	0910 30 10	Fresh turmeric, other than in processed form
65.	1001	Wheat and meslin [other than those put up in unit container and bearing a registered brand name]
66.	1002	Rye [other than those put up in unit container and bearing a registered brand name]
67.	1003	Barley [other than those put up in unit container and bearing a registered brand name]
68.	1004	Oats [other than those put up in unit container and bearing a registered brand name]
69.	1005	Maize (corn) [other than those put up in unit container and bearing a registered brand name]
70.	1006	Rice [other than those put up in unit container and bearing a registered brand name]
71.	1007	Grain sorghum [other than those put up in unit container and bearing a registered brand name]
72.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi] [other than those put up in unit container and bearing a registered brand name]
73.	1101	Wheat or meslin flour [other than those put up in unit container and bearing a registered brand name].

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
74.	1102	Cereal flours other than of wheat or meslin, [maize (corn) flour, Rye flour, etc.] [other than those put up in unit container and bearing a registered brand name]
75.	1103	Cereal groats, meal and pellets [other than those put up in unit container and bearing a registered brand name]
76.	1104	Cereal grains hulled
77.	1105	Flour, of potatoes [other than those put up in unit container and bearing a registered brand name]
78.	1106	Flour, of the dried leguminous vegetables of heading 0713 (pulses) [other than guar meal 1106 10 10 and guar gum refined split 1106 10 90], of sago or of roots or tubers of heading 0714 or of the products of Chapter 8 i.e. of tamarind, of singoda, mango flour, etc. [other than those put up in unit container and bearing a registered brand name]
79.	12	All goods of seed quality
80.	1201	Soya beans, whether or not broken, of seed quality.
81.	1202	Ground-nuts, not roasted or otherwise cooked, whether or not shelled or broken, of seed quality.
82.	1204	Linseed, whether or not broken, of seed quality.
83.	1205	Rape or colza seeds, whether or not broken, of seed quality.
84.	1206	Sunflower seeds, whether or not broken, of seed quality.
85.	1207	Other oil seeds and oleaginous fruits (i.e. Palm nuts and kernels, cotton seeds, Castor oil seeds, Sesamum seeds, Mustard seeds, Saffower (Carthamus tinctorius) seeds, Melon seeds, Poppy seeds, Ajams, Mango kernel, Niger seed, Kokam) whether or not broken, of seed quality.
86.	1209	Seeds, fruit and spores, of a kind used for sowing.
87.	1210	Hop cones, fresh.
88.	1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purpose, fresh or chilled.
89.	1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh or chilled.
90.	1213	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
91.	1214	Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupines, vetches and similar forage products, whether or not in the form of pellets.
92.	1301	Lac and Shellac
93.	1404 90 40	Betel leaves
94.	1701 or 1702	Jaggery of all types including Cane Jaggery (gur) and Palmyra Jaggery
95.	1904	Puffed rice, commonly known as Muri, flattened or beaten rice, commonly known as Chira, parched rice, commonly known as khoi, parched paddy or rice coated with sugar or gur, commonly known as Murki
96.	1905	Pappad, by whatever name it is known, except when served for consumption
97.	1905	Bread (branded or otherwise), except when served for consumption and pizza bread
98.	2106	Prasadam supplied by religious places like temples, mosques, churches, gurudwaras, dargahs, etc.
99.	2201	Water [other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralized and water sold in sealed container]
100.	2201	Non-alcoholic Toddy, Neera including date and palm neera
101.	2202 90 90	Tender coconut water other than put up in unit container and bearing a registered brand name
102.	2302, 2304, 2305, 2306, 2308, 2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake
103.	2501	Salt, all types
104.	2716 00 00	Electrical energy
105.	2835	Dicalcium phosphate (DCP) of animal feed grade conforming to IS specification No.5470 : 2002
106.	3002	Human Blood and its components
107.	3006	All types of contraceptives
108.	3101	All goods and organic manure [other than put up in unit containers and bearing a registered brand name]
109.	3304	Kajal [other than kajal pencil sticks], Kumkum, Bindi, Sindur, Alta
110.	3825	Municipal waste, sewage sludge, clinical waste

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
111.	3926	Plastic bangles
112.	4014	Condoms and contraceptives
113.	4401	Firewood or fuel wood
114.	4402	Wood charcoal (including shell or nut charcoal), whether or not agglomerated
115.	4802 / 4907	Judicial, Non-judicial stamp papers, Court fee stamps when sold by the Government Treasuries or Vendors authorized by the Government
116.	4817 / 4907	Postal items, like envelope, Post card etc., sold by Government
117.	48 / 4907	Rupee notes when sold to the Reserve Bank of India
118.	4907	Cheques, lose or in book form
119.	4901	Printed books, including Braille books
120.	4902	Newspapers, journals and periodicals, whether or not illustrated or containing advertising material
121.	4903	Children's picture, drawing or colouring books
122.	4905	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed
123.	5001	Silkworm laying, cocoon
124.	5002	Raw silk
125.	5003	Silk waste
126.	5101	Wool, not carded or combed
127.	5102	Fine or coarse animal hair, not carded or combed
128.	5103	Waste of wool or of fine or coarse animal hair
129.	52	Gandhi Topi
130.	52	Khadi yarn
131.	5303	Jute fibres, raw or processed but not spun
132.	5305	Coconut, coir fibre
133.	63	Indian National Flag
134.	6703	Human hair, dressed, thinned, bleached or otherwise worked
135.	6912 00 40	Earthen pot and clay lamps
136.	7018	Glass bangles (except those made from precious metals)

Schedule		
S. No.	**Chapter / Heading / Sub-heading / Tariff item**	**Description of Goods**
137.	8201	Agricultural implements manually operated or animal driven i.e. Hand tools, such as spades, shovels, mattocks, picks, hoes, forks and rakes; axes, bill hooks and similar hewing tools; secateurs and pruners of any kind; scythes, sickles, hay knives, hedge shears, timber wedges and other tools of a kind used in agriculture, horticulture or forestry.
138.	8445	Amber charkha
139.	8446	Handloom [weaving machinery]
140.	8802 60 00	Spacecraft (including satellites) and suborbital and spacecraft launch vehicles
141.	8803	Parts of goods of heading 8801
142.	9021	Hearing aids
143.	92	Indigenous handmade musical instruments
144.	9603	Muddhas made of sarkanda and phool bahari jhadoo
145.	9609	Slate pencils and chalk sticks
146.	9610 00 00	Slates
147.	9803	Passenger baggage
148.	Any chapter	Puja samagri namely,- (i) Rudraksha, rudraksha mala, tulsi kanthi mala, panchgavya (mixture of cowdung, desi ghee, milk and curd); (ii) Sacred thread (commonly known as yagnopavit); (iii) Wooden khadau; (iv) Panchamrit, (v) Vibhuti sold by religious institutions, (vi) Unbranded honey [proposed GST Nil] (vii) Wick for diya. (viii) Roli (ix) Kalava (Raksha sutra) (x) Chandan tika
149.	–	Supply of lottery by any person other than State Government, Union Territory or Local authority subject to the condition that the supply of such lottery has suffered appropriate central tax, State tax, Union territory tax or integrated tax, as the case may be, when supplied by State Government, Union Territory or local authority, as the case may be, to the lottery distributor or selling agent appointed by the State Government, Union Territory or local authority, as the case may be.

Explanation.- For the purposes of this Schedule,-

(i) The phrase "unit container" means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.

(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(iv) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU] (Mohit Tewari) Under Secretary to the Government of India

Mohit Tewari
Under Secretary to the Government of India

Notification No.3/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Table below read with relevant List appended hereto and falling under the tariff item, sub-heading, heading or Chapter, as the case

may be, as specified in the corresponding entry in column (2) of the said Table, from so much of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, as specified in the corresponding entry in column (5) of the Table aforesaid.

Table

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate	Condition No.
1.	Any Chapter	Goods specified in the List annexed to this Table required in connection with: (1) Petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, or (2) Petroleum operations undertaken under specified contracts, or (3) Petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy, or (4) Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP), or (5) Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy.	2.5%	1

Annexure

Condition No.	Description of Goods
1.	If,- (a) the goods are supplied to,- (i) the Oil and Natural Gas Corporation or Oil India Limited (hereinafter referred to as the "licensee") or a sub-contractor of the licensee and in each case in connection with petroleum operations to be undertaken under petroleum exploration licenses or mining leases, as the case may be, granted by the Government of India or any State Government on nomination basis; or

	(ii) an Indian Company or Companies, a Foreign Company or Companies, or a consortium of an Indian Company or Companies and a Foreign Company or Companies (hereinafter referred to as the "contractor") or a sub-contractor of the contractor and in each case in connection with petroleum operations to be undertaken under a contract with the Government of India; or (iii) an Indian Company or Companies, a Foreign Company or Companies, or a consortium of an Indian Company or Companies and a Foreign Company or Companies (hereinafter referred to as the "contractor") or a sub-contractor of such Company or Companies or such consortium and in each case in connection with petroleum operations or coal bed methane operations, as the case may be, to be undertaken under a contract signed with the Government of India, on or after the 1st day of April,1998, under the New Exploration Licensing Policy, or on or after the 1st day of April 2001 in terms of the Coal Bed Methane Policy, or on or after the 14th day of October, 2015 in terms of the Marginal Field Policy, as the case may be; (b) where the recipient of outward supply of goods,- (i) is a licensee, he produces to the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, at the time of outward supply of goods, the following, namely, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the goods are required for petroleum operations referred to in sub-clause (i) of clause (a); (ii) is a contractor, he produces to the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, at the time of outward supply of goods, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the goods are required for (A) petroleum operations referred to in sub-clause (ii) of clause (a) under the contract referred to in that sub-clause, or (B) petroleum operations or coal bed methane operations referred to in sub-clause (iii) of clause (a), as the case may be, under a contract signed under the New Exploration Licensing Policy or the Coal Bed Methane Policy or the Marginal Field Policy, as the case may be;

	(c) where the recipient of outward supply of goods is a sub-contractor, he produces to the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, at the time of outward supply, the following, namely :- (i) a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the goods are required for :- (A) petroleum operations referred to in sub-clause (i) of clause (a) under the licenses or mining leases, as the case may be, referred to in that sub-clause and containing the name of such sub-contractor, or (B) petroleum operations referred to in sub-clause (ii) of clause (a) under the contract referred to in that sub-clause and containing, the name of such sub- contractor, or (C) petroleum operations or coal bed methane operations, as the case may be, referred to in sub- clause (iii) of clause (a) under a contract signed under the New Exploration Licensing Policy or the Coal Bed Methane Policy or the Marginal Field Policy, as the case may be, and containing the name of such sub-contractor; (ii) an affidavit to the effect that such sub-contractor is a bonafide sub-contractor of the licensee or lessee or contractor, as the case may be; (iii) an undertaking from such licensee or lessee or contractor, as the case may be, binding him to pay any tax, fine or penalty that may become payable, if any of the conditions of this entry are not complied with by such sub-contractor or licensee or lessee or contractor, as the case may be; (d) where the goods so supplied to the licensee or a sub-contractor of the licensee, or the contractor or a sub-contractor of the contractor are sought to be transferred to another sub-contractor of the licensee or another licensee or a sub- contractor of such licensee, or another sub-contractor of the contractor or another contractor or a subcontractor of such contractor (hereinafter referred to as the “transferee”), such transferee produces to the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over such transferee, at the time of such transfer, the following, namely:- (i) a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods may be transferred in the name of the transferee and that the said goods are required for petroleum operations to be undertaken under :-

	(A) petroleum exploration or mining leases referred to in sub-clause (i) of clause (a), or (B) petroleum operations to be undertaken under a contract referred to in sub-clause (ii) of clause (a), or (C) petroleum operations or coal bed methane operations, as the case may be, to be undertaken under a contract referred to in sub-clause (iii) of clause (a) (ii) undertaking from the transferee to comply with all the conditions of this entry, including that he shall pay tax, fine or penalty that may become payable, if any of the conditions of this entry are not complied with by himself, where he is the licensee/ contractor or by the licensee/ contractor of the transferee where such transferee is a sub-contractor; (iii) a certificate,- (A) in the case of a petroleum exploration license or mining lease, as the case may be, granted by the Government of India or any State Government on nomination basis, that no foreign exchange remittance is made for the transfer of such goods undertaken by the transferee on behalf of the licensee or lessee, as the case may be; (B) in the case of a contract entered into by the Government of India and a Foreign Company or Companies or, the Government of India and a consortium of an Indian Company or Companies and a Foreign Company or Companies, that no foreign exchange remittance is made for the transfer of such goods undertaken by the transferee on behalf of the Foreign Company or Companies, as the case may be: Provided that nothing contained in this sub-clause shall apply if such transferee is an Indian Company or Companies. (e) where the goods so supplied are sought to be disposed of, the recipient of outward supply or the transferee, as the case may be, may pay the tax which would have been payable but for the exemption contained herein, on the depreciated value of such goods subject to the condition that the recipient of outward supply or the transferee, as the case may be, produces before the Deputy Commissioner of Central tax or the Assistant Commissioner of Central tax or the Deputy Commissioner of State tax or the Assistant Commissioner of State tax, as the case may be, having jurisdiction over the supplier of goods, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are no longer required for the petroleum operations or coal bed methane operations, and the depreciated value of the goods shall be equal to the original value of the goods at the time of import reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of clearance of the goods, namely:-

	(i) for each quarter in the first year at the rate of 4 per cent.; (ii) for each quarter in the second year at the rate of 3 per cent.; (iii) for each quarter in the third year at the rate of 2.5 per cent.; and (iv) for each quarter in the fourth year and subsequent years at the rate of 2 per cent., subject to the maximum of 70 per cent.

List
[See S.No.1 of the Table]

(1) Land Seismic Survey Equipment and accessories, requisite vehicles including those for carrying the equipment, seismic survey vessels, global positioning system and accessories, and other materials required for seismic work or other types of Geophysical and Geochemical surveys for onshore and offshore activities.

(2) All types of drilling rigs, jackup rigs, submersible rigs, semi-submersible rigs, drill ships, drilling barges, shot-hole drilling rigs, mobile rigs, workover rigs consisting of various equipment and other drilling equipment required for drilling operations, snubbing units, hydraulic workover units, self-elevating workover platforms, Remote Operated Vessel (ROV).

(3) Helicopters including assemblies/parts.

(4) All types of marine vessels to support petroleum operations including work boats, barges, crew boats, tugs, anchor handling vessels, lay barges and supply boats, marine ship equipment including water maker, DP system and Diving system.

(5) All types of equipment/ units for specialised services like diving, cementing, logging, casing repair, production testing, simulation and mud services, oil field related lab equipment, reservoir engineering, geological equipment, directional drilling, stimulation, Coil Tubing units, Drill Stem Testing (DST), data acquisition and processing, solids control, fishing (as related to downhole retrieval in oil field operations or coal bed methane operations), well control, blowout prevention(BOP), pipe inspection including Non Destructive Testing, coring, gravel pack, well completion and workover for oil/gas/CBM wells including wireline and downhole equipment.

(6) All types of casing pipes, drill pipes, production tubing, pup joints, connections, coupling, kelly, cross overs and swages, Drive Pipes.

(7) All types of drilling bits, including nozzles, breakers and related tools.

(8) All types of oil field chemicals or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling, production and transportation of oil or gas.

(9) Process, production and well platforms/ installation for oil, gas or CBM and water injection including items forming part of the platforms/ installation and equipment required like process equipment, turbines, pumps, generators, compressors, primemovers, water makers, filters and filtering equipment, telemetery, telecommunication, tele-control and other material required for platforms/ installations.

(10) Line pipes for flow lines and trunk pipelines including weight-coating and wrapping.

(11) Derrick barges, Mobile and stationary cranes, trenchers, pipelay barges, cargo barges and the like required in the construction/ installation of platforms and laying of pipelines.

(12) Single buoy mooring systems, mooring ropes, fittings like chains, shackles, couplings marine hoses and oil tankers to be used for oil storage and connected equipment, Tanks used for storage of oil, condensate, coal bed methane, water, mud, chemicals and related materials.

(13) All types of fully equipped vessels and other units /equipment required for pollution control, fire prevention, fire fighting, safety items like Survival Craft, Life Raft, fire and gas detection equipment, including H2S monitoring equipment.

(14) Mobile and skid mounted pipe laying, pipe testing and pipe inspection equipment.

(15) All types of valves including high pressure valves.

(16) Communication equipment required for petroleum or coal bed methane operations including synthesized VHF Aero and VHF multi channel sets/ VHF marine multi channel sets.

(17) Non-directional radio beacons, intrinsically safe walkie-talkies, directional finders, EPIRV, electronic individual security devices including electronic access control system.

(18) Specialized antenna system, simplex telex over radio terminals, channel micro wave systems, test and measurement equipment.

(19) X-band radar transponders, area surveillance system.

(20) Common depth point (CDP) cable, logging cable, connectors, geo-phone strings, perforation equipment and explosives

(21) Wellhead and Christmas trees, including valves, chokes, heads spools, hangers and actuators, flexible connections like chicksons and high pressure hoses, shut down panels.

(22) Cathodic Protection Systems including anodes.

(23) Technical drawings, maps, literature, data tapes, Operational and Maintenance Manuals required for petroleum or coal bed methane operations.

(24) Sub-assemblies, tools, accessories, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List.

Explanation. –

(1) In this notification, "tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU]

Mohit Tewari
Under Secretary to the Government of India

Notification No.4/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods, the description of which is specified in column (3) of the Table below read with relevant List appended hereto and

falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, from so much of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions annexed to this notification, as specified in the corresponding entry in column (5) of the Table aforesaid.

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
5.	–	Supply of lottery.	State Government, Union Territory or any local authority	Lottery distributor or selling agent. *Explanation.*- For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub section 1 of section 11 of the Lotteries (Regulations) Act, 1998 (17 of 1998).

Explanation. –

(1) In this Table, "tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU] (Mohit Tewari) Under Secretary to the Government of India

Mohit Tewari
Under Secretary to the Government of India

Notification No.5/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, heading, sub-heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

Table

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	5007	Woven fabrics of silk or of silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
6.	5512 to 5516	Woven fabrics of manmade staple fibres
7.	60	Knitted or crocheted fabrics [All goods]
8.	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
9.	8602	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
10.	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
11.	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)
12.	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)
13.	8606	Railway or tramway goods vans and wagons, not self-propelled
14.	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
15.	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing

Explanation. –

(1) In this Table, "tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU]

Mohit Tewari
Under Secretary to the Government of India

Notification No.7/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts, supplies of goods, the description of which is specified in column (3) of the Table below, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2), from the whole of the central tax leviable thereon under section 9 of the Central Good and Services Tax Act, 2017 (12 of 2017), namely:-

Table

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
1.	Any chapter	The supply of goods by the CSD to the Unit Run Canteens
2.	Any chapter	The supply of goods by the CSD to the authorized customers
3.	Any chapter	The supply of goods by the Unit Run Canteens to the authorized customers

Explanation. –

(1) In this notification, “tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017. [F.No.354/117/2017-TRU]

Mohit Tewari
Under Secretary to the Government of India

Circular No. 1/1/2017

New Delhi, Dated the 26th June, 2017

To,

The Principal Chief Commissioner/Chief Commissioners/
Principal Commissioner/ Commissioner of Central Tax (All) /
Director General of Systems

Madam/Sir,

Subject: Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder – Reg.

In exercise of the powers conferred by Clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the Act) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the said Act, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the of the said Act or the rules made thereunder mentioned in the corresponding entry in Column (3) of the said Table:-

S. No.	Designation of the Officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made
(1)	(2)	(3)
1	Assistant or Deputy Commissioners of Central Tax and Assistant of Deputy Director of Central Tax	i. Sub-Section (5) of Section 10 ii. Proviso to Sub-Section (1) of Section 27 iii. Section 30 iv. Rule 6 v. Rule 23 vi. Rule 25
2.	Superintendent of Central Tax	i. Sub-Section (8) of Section 25 ii. Section 28 iii. Section 29 iv. Rule 9 v. Rule 10 vi. Rule 12 vii. Rule 16 viii. Rule 17 xi. Rule 19 x. Rule 22 xi. Rule 24

2. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

3. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Upender Gupta
Commissioner (GST)

Circular No. 2/2/2017-GST

New Delhi, Dated the 4thJuly, 2017

To,

The Principal Chief Commissioner/Chief Commissioners/
Principal Commissioner/ Commissioner of Central Tax (All) /
Director General of Systems

Madam/Sir,

Subject: Issues related to furnishing of Bond/ Letter of Undertaking for Exports–Reg.

Various communications have been received from the field formations and exporters on the issue of difficulties being faced while supplying the goods or services for export without payment of integrated tax and filing the FORM GST RFD -11 on the common portal (www.gst.gov.in), because of which exports are being held up.

2. Whereas, as per rule 96A of the Central Goods and Services Tax Rules, 2017, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking. This bond or Letter of Undertaking is required to be furnished in FORM GST RFD-11 on the common portal. Further, Circular No. 26/2017- Customs dated 1st July, 2017 has clarified that the procedure as prescribed under rule 96A of the said rules requires to be followed for the export of goods from 1st July, 2017.

3. Another issue being raised by various stakeholders is that the Bond/ Letter of Undertaking is required to be given through the proper officer which is to be furnished to the jurisdictional Commissioner as per sub-rule (1) of rule 96A of the said rules. Taking cognizance of the fact that a large number of such Bonds/Letter of Undertakings would be required to be filed by the registered exporters who would be located at a distance from the office of the jurisdictional Commissioner, it is understood that the furnishing

of such bonds/undertakings before the jurisdictional Commissioner may cause hardship to the exporters.

4. Thus, in exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, 2017, it is hereby stated that the acceptance of the Bond/Letter of Undertaking required to be furnished by the exporter under rule 96A of the said rules shall be done by the jurisdictional Deputy/ Assistant Commissioner.

5. Further, in exercise of the powers conferred by section 168 of the said Act, for the purpose of uniformity in the implementation of the said Act, the Bond/Letter of Undertaking required to be furnished under rule 96A of the said rules may be furnished manually to the jurisdictional Deputy/ Assistant Commissioner in the format specified in FORM RFD-11 till the module for furnishing of FORM RFD-11 is available on the common portal. The exporters may download the FORM GST RFD-11 from the website of the Central Board of Excise and Customs (www.cbec.gov.in) and furnish the duly filled form to the jurisdictional Deputy/Assistant Commissioner.

6. The above specified provisions shall be applicable to all applications which have been filed on or after 1st July, 2017. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Upender Gupta
Commissioner (GST)

Circular No. 3/3/2017 - GST

New Delhi, Dated the 5th July, 2017

To,

The Principal Chief Commissioner/Chief Commissioners/
Principal Commissioner/ Commissioner of Central Tax (All) /
Director General of Systems

Madam/Sir,

Subject: Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017–Reg.

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section

20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:-

Table

S. No.	Designation of the officer	Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	i. Sub- section (7) of Section 67 ii. Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	i. Sub- sections (1), (2), (5) and (9) of Section 67 ii. Sub-section (1) and (2) of Section 71 iii. Proviso to section 81 iv. Proviso to sub-section (6) of Section 129 v. Sub-rules (1),(2),(3) and (4) of Rule 139 vi. Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissionerof Central Tax	i. Sub-sections (5), (6), (7) and (10) of Section 54 ii. Sub-sections (1), (2) and (3) of Section 60 iii. Section 63 iv. Sub-section (1) of Section 64 v. Sub-section (6) of Section 65 vi. Sub-sections (1), (2), (3), (5), (6), (7), (9), (10) of Section 74 vii. Sub-sections (2), (3), (6) and (8) of Section 76 viii. Sub-section (1) of Section 79 ix. Section 123 x. Section 127 xi. Sub-section (3) of Section 129 xii. Sub- sections (6) and (7) of Section 130 xiii. Sub- section (1) of Section 142 xiv. Sub-rule (2) of Rule 82 xv. Sub-rule (4) of Rule 86 xvi. Explanation to Rule 86 xvii. Sub-rule (11) of Rule 87 xviii. Explanation 2 to Rule 87 xix. Sub-rules (2) and (3) of Rule 90

		xx. Sub-rules (2) and (3) of Rule 91 xxi. Sub-rules(1), (2), (3), (4) and (5) of Rule 92 xxii. Explanation to Rule 93 xxiii. Rule 94 xxiv. Sub-rule (6) of Rule 96 xxv. Sub-rule (2) of Rule 97 xxvi. Sub-rule (2), (3), (4), (5) and (7) of Rule 98 xxvii. Sub-rule (2) of Rule 100 xxviii. Sub-rules (2), (3), (4) and (5) of Rule 101 xxix. Rule 143 xxx. Sub-rules (1), (3), (4), (5), (6) and (7) of Rule 144 xxxi. Sub-rules (1) and (2) of Rule 145 xxxii. Rule 146 xxxiii. Sub-rules (1), (2), (3), (5), (6), (7), (8), (10),(11), (12), (14) and (15) of Rule 147 xxxiv. Sub-rules(1),(2) and (3) of Rule 151 xxxv. Rule 152 xxxvi. Rule 153 xxxvii. Rule 155
4.	Superintendent of Central Tax	i. Sub- section (6) of Section 35 ii. Sub-sections (1) and (3) of Section 61 iii. Sub-section (1) of Section 62 iv. Sub-section (7) of Section 65 v. Sub-section (6) of Section 66 vi. Sub-section (11) of Section 67 vii. Sub-section (1) of Section 70 viii. Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 ix. Sub-rule (6) of Rule 56 x. Sub-rules (1), (2) and (3) of Rule 99 xi. Sub-rule (1) of Rule 132 xii. Sub-rule (1), (2), (3) and (7) of Rule 142 xiii. Rule 150
5.	Inspector of Central Tax	i. Sub-section (3) of Section 68 ii. Sub- rule (17) of Rule 56 iii. Sub- rule (5) of Rule 58

2. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Upender Gupta
Commissioner (GST)

SERVICES UNDER REVERSE CHARGE AS APPROVED BY GST COUNCIL

The fitment of rates of services were discussed on 19 May 2017 during the 14th GST Council meeting held at Srinagar, Jammu & Kashmir. The Council has broadly approved the GST rates for services at Nil, 5%, 12%, 18% and 28%. The list of services that will be under reverse charge as approved by the GST Council is given below. The information is being uploaded immediately after the GST Council's decision and it will be subject to further vetting during which the list may undergo some changes. The decisions of the GST Council are being communicated for general information and will be given effect to through gazette notifications which shall have force of law.

Sl. No.	Service	Provider of service	Percentage of service tax payable by service provider	Recipient of Service	Percentage of service tax payable by any person other than the service provider
1.	Taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory other than non-assessee online recipient (OIDAR)	Any person who is located in a non-taxable territory	Nil	Any person located in the taxable territory other than non-assessee online recipient (Business Recipient)	100%
2.	Services provided or agreed to be provided by a goods transport agency (GTA) in respect of transportation of goods by road	Goods Transport Agency (GTA)	Nil	(a) any factory registered under or governed by the Factories Act, 1948; (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; (c) any co-operative society established by or under any law;	100%

				(d) any person registered under CGST/SGST/UTGST Act; (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons. (g) Casual taxable person	
3.	Services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly	An individual advocate or firm of advocates	Nil	Any business entity.	100%
4.	Services provided or agreed to be provided by an arbitral tribunal	An arbitral tribunal	Nil	Any business entity.	100%
5.	Sponsorship services	Any person	Nil	Any body corporate or partnership firm.	100%
6.	Services provided or agreed to be provided by Government or local authority excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;	Government or local authority	Nil	Any business entity.	100%

	(iii) transport of goods or passengers.				
7.	Services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;	A director of a company or a body corporate	Nil	A company or a body corporate.	100%
8.	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	An insurance agent	Nil	Any person carrying on insurance business.	100%
9.	Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	Nil	A banking company or a financial institution or a non-banking financial company.	100%
10.	Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory to a person located in non-taxable territory	Nil	Importer as defined under clause (26) of section 2 of the Customs Act, 1962.	100%
11.	Transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works	Author or music composer, photographer, artist, etc.	NIL	Publisher, Music company, Producer	100%
12.	Radio taxi or Passenger Transport Services provided through electronic commerce operator	Taxi driver or Rent a cab operator	Nil	Any person	100% by Electronic Commerce Operator

Seeks to Amend Notification no. 1/2017- Central Tax (Rate) dated 28.06.2017 to Give Effect to GST Council Decisions Regarding gst rates.

Notification No. 41/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673(E), dated the 28th June, 2017, namely:-

In the said notification,-

(A) in Schedule I - 2.5%,-

(i) for S. No. 1 and the entries relating thereto, the following shall be substituted, namely: -

"1	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]" ;

(ii) for S. No. 2 and the entries relating thereto, the following shall be substituted, namely:-

"2	0303, 0304, 0305, 0306, 0307, 0308	All goods [other than fresh or chilled] and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]" ;

(iii) S. Nos. 3,4,5, 6 and the entries relating thereto shall be omitted;

(iv) in S. No. 16, for the entry in column (3), the entry "All goods [other than fresh or chilled] and put up in unit container and, -

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be substituted;

(v) in S. No. 23, in the entry in column (3) , after the word "frozen", the words ", put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be inserted;

(vi) in S. No. 26, for the entry in column (3), the entry "Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets, put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be substituted;

(vii) in S. No. 27, for the entry in column (3) ,the entry "Cashew nuts, whether or not shelled or peeled, desiccated coconuts " shall be substituted;

(viii) in S. No. 30, in the entry in column (3) , after the words "shelled or peeled", the words ",put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in

respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be inserted;

(ix) in S. No. 58, in the entry in column (3) , after the words "Meal, powder," the words "Flour" , shall be inserted;

(x) S. No. 60 and the entries relating thereto shall be omitted;

(xi) in S. No. 66, in column (3), the words, "other than of seed quality" shall be omitted;

(xii) for S. No. 72 and the entries relating thereto, the following shall be substituted, namely:-

"72	1210 20 00	Hop cones, ground, powdered or in the form of pellets; lupulin" ;

(xiii) for S. No. 78 and the entries relating thereto, the following shall be substituted, namely:-

"78	1404 [other than 1404 90 10, 1404 90 40, 1404 90 50, 1404 90 60]	Vegetable products not elsewhere specified or included such as, Cotton linters, Soap nuts, Hard seeds, pips, hulls and nuts, of a kind used primarily for carving, Rudraksha seeds [other than bidi wrapper leaves (tendu), betel leaves, Indian katha, coconut shell, unworked] " ;

(xiv)) in S. No. 91, in column (3), the words, "khandsari sugar" shall be omitted;

(xv) in S. No. 92, for the entry in column (3), the entry "Palmyra sugar, mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak, khaja, khajuli, anarsa" shall be substituted;

(xvi) in S. No. 100 A, in column (3), after the words "Roasted Gram", the words ",idli/dosa batter, chutney powder" shall be inserted;

(xvii) for S. No. 111 and the entries relating thereto, the following shall be substituted, namely:-

"111	2503	Sulphur of all kinds, other than sublimed sulphur, precipitated sulphur and colloidal sulphur " ;

(xviii) in S. No. 135, in column (3), after the words, figures and letters "natural boric acid containing not more than 85% of H3BO3" the brackets and words "(calculated on dry weight)" shall be inserted;

(ix) after S. No. 156 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"156A	2621	Fly Ash " ;

(xx) for S. No. 189 and the entries relating thereto, the following shall be substituted, namely:-

"189	4011 30 00	New pneumatic tyres, of rubber of a kind used on aircraft";

(xxi) after S. No. 197 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"197A	4107	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114
197B	4112	Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114
197C	4113	Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114
197D	4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather
197E	4115	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour" ;

(xxii) after S. No. 218A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"218B	5607	Jute twine, coir cordage or ropes
218C	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
218D	5609	Products of coir" ;

(xxiii) after S. No. 219A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“219AA	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs) ” ;

(xxiv) for S. No. 224 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

“224	63 [other than 6309]	Other made up textile articles, sets, of sale value not exceeding Rs. 1000 per piece ” ;

(xxv) after S. No. 224 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“224A	6309	Worn clothing and other worn articles; rags ” ;

(xxvi) after S. No. 225 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“225A	6815	Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content” ;

(xxvii) after S. No. 230 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“230A	8407 10 00, 8411	Aircraft engines ” ;

(xxviii) in S. No. 234A, for the entry in column (3), the entry “E-waste Explanation: For the purpose of this entry, e-waste means electrical and electronic equipment listed in Schedule I of the E-Waste (Management) Rules, 2016 (published in the Gazette of India vide G.S.R. 338 (E) dated the 23rd March, 2016), whole or in part if discarded as waste by the consumer or bulk consumer” shall be substituted;

(xxix) after S. No. 257A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“257B	9401 10 00	Aircraft seats ” ;

(xxx) for S. No. 259A and the entries relating thereto, the following serial numbers and the entries shall be substituted, namely:-

“259A	4016 or 9503	Toy balloons made of natural rubber latex
“259B	9507	Fishing hooks
259C	9601	Worked corals other than articles of coral”;

(B) in Schedule II-6%,-

(i) S. Nos. 2,3,4,5,6,7,8,9,10, and the entries relating thereto shall be omitted;

(ii) for S. No. 11 and the entries relating thereto, the following shall be substituted, namely:-

"11	0402 91 10, 0402 99 20	Condensed milk" ;

(iii) in S. No. 14, in column (3), the words "and desiccated coconuts", shall be omitted;

(iv) after S. No. 32 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

"32A	1701 91, 1701 99	All goods, including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or nil GST)
32B	1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared";

(v) in S. No. 43, for the entry in column (3) ,the entry "Yeasts (active and inactive); other single cell micro-organisms, dead (but not including vaccines of heading 3002); prepared baking powders" shall be substituted;

(vi) for S. No. 44 and the entries relating thereto, the following shall be substituted, namely:-

"44	2103	All goods, including Sauces and preparations therefor, mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard, Curry paste, mayonnaise and salad dressings " ;

(vii) in S. No. 45, in column (3), the words " including idli or dosa batter" shall be omitted;

(viii) after S. No. 46 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"46A	2106 90 91	Diabetic foods " ;

(ix) after S. No. 57 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"57A	2804 40 10	Medical grade oxygen " ;

(x) for S. No. 70 and the entries relating thereto, the following shall be substituted, namely:-

“70	3215	All Goods, including printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink” ;

(xi) S. No. 71, 86, 87, 88 and the entries relating thereto shall be omitted;

(xii) for S. Nos. 89, 90 and the entries relating thereto, the following shall be substituted, namely:-

“89	4202 22 20	Hand bags and shopping bags, of cotton
90	4202 22 30	Hand bags and shopping bags, of jute” ;

(xiii) in S. No. 139, in column (3), after the words “with rubber or plastics”, the brackets and words “[other than jute twine, coir cordage or ropes]” shall be inserted;

(xiv) S. No. 140, and the entries relating thereto shall be omitted;

(xv) in S. No. 141, in column (3), after the words “specified or included”, the brackets and words “[other than products of coir]” shall be inserted;

(xvi) S. No. 152, and the entries relating thereto shall be omitted;

(xvii) for S. No. 171 and the entries relating thereto, the following shall be substituted, namely:-

“171	“171 63 [other than 6309]	Other made up textile articles, sets of sale value exceeding Rs. 1000 per piece [other than Worn clothing and other worn articles; rags] ” ;

(xviii) after S. No. 171A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“171B	6505	Hats (knitted/crocheted) or made up from lace or other textile fabrics” ;

(xix) in S. No. 177, in column (3), the words, “Fly ash bricks” shall be omitted;

(xx) in S. No. 196, in column (3), after the words “sports-ground rollers”, the word, brackets and figures “; Parts [8432 90]” shall be inserted;

(xxi) in S. No. 197, in column (3), after the words and figures “of heading 8437”, the word, brackets and figures “; parts [8433 90 00]” shall be inserted;

(xxii) in S. No. 200, in column (3), for the words “Sewing machines”, the words and figures “Sewing machines, other than book-sewing machine of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machines needles and parts of sewing machines” shall be substituted;

(xxiii) after S. No. 201 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“201A	8509	Wet grinder consisting of stone as a grinder” ;

(xxiv) after S. No. 207 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“207A	8710	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles” ;

(xxv) for S. No. 215 and the entries relating thereto, the following shall be substituted, namely:-

“215	9003	Frames and mountings for spectacles, goggles or the like, and parts thereof” ;

(xxvi) in S. No. 216, in column (3), after the word “corrective”, the brackets and words “[other than goggles for correcting vision]” shall be inserted;

(xxvii) in S. No. 221, for the entry in column (3) ,the entry “Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]” shall be substituted;

(xxviii) after S. No. 222 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“222A	9403	Furniture wholly made of bamboo, cane or rattan”;

(xxix) in S. No. 231, in the entry in column (3), the words “fishing hooks”, shall be omitted;

(xxx) after S. No. 242 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	(2)	(3)
"243	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software";

(C) in Schedule III-9%,-

(i) S. No. 1, and the entries relating thereto, shall be omitted;

(ii) S. No. 10, and the entries relating thereto, shall be omitted;

(iii) in S. No. 12, for the entry in column (3), the entry "Sugar confectionery [other than mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets and gajak]" ,shall be substituted;

(iv) after S. No. 12 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"12A	1804	Cocoa butter, fat and oil
12B	1805	Cocoa powder, not containing added sugar or sweetening matter
12C	1806	Chocolates and other food preparations containing cocoa";

(v) in S. No. 13, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"1901 [other than 1901 20 00]	Malt extract, food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis not elsewhere specified or included [other than mixes and doughs for the preparation of bakers' wares of heading 1905]";

(vi) S. No. 14, and the entries relating thereto, shall be omitted;

(vii) in S. No. 16, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"1905	Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products[other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products";

(viii) after S. No. 16 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"16A	2101 11, 2101 12 00	Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee";

(ix) S. Nos. 18, 19 and 20 and the entries relating thereto, shall be omitted;

(x) in S. No. 23, for the entry in column (3), the entry, "Food preparations not elsewhere specified or included [other than roasted gram, sweetmeats, batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods]" shall be substituted;

(xi) after S. No. 24 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"24A	2202 91 00, 2202 99 90	Other non-alcoholic beverages [other than tender coconut water]";

(xii) after S. No. 26 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"26A	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
26B	2516 12 00	Granite, other than blocks";

(xiii) S. No. 27, and the entries relating thereto, shall be omitted;

(xiv) in S. No. 30, for the entry in column (3), the entry "Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste [other than fly ash]" shall be substituted;

(xv) after S. No. 30 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"30A	2706	Tar distilled from other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars";

(xvi) in S. No. 33, for the entry in column (3), the entry "Petroleum oils and oils obtained from bituminous minerals, other than petroleum crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils; Avgas [other than kerosene PDS, petrol, diesel and ATF, not in GST]" shall be substituted;

(xvii) in S. No. 52, for the entry in column (3), the entry "Prepared pigments, prepared opacifiers, prepared colours, vitrifiable enamels, glazes, engobes (slips), liquid lustres, and other similar preparations of a kind used in ceramic, enamelling or glass industry; glass frit or other glass, in the form of powder, granules or flakes" shall be substituted;

(xviii) in S. No. 54A, for the entry in column (3), the entry "Artists', students' or signboard painters' colours, modifying tints, amusement colours and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings" shall be substituted;

(xix) S. No. 55, and the entries relating thereto, shall be omitted;

(xx) after S. No. 57 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"57A	3303	Perfumes and toilet waters";

(xxi) in S. No. 58, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations [other than kajal, Kumkum, Bindi, Sindur, Alta]";

(xxii) in S. No. 59, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3305	Preparations for use on the hair";

(xxiii) in S. No. 60, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3306	Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages [other than tooth powder]";

(xxiv) after S. No. 60 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"60A	3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorisers, whether or not perfumed or having disinfectant properties [other than odoriferous preparations which operate by burning, agarbattis, lobhan, dhoop batti, dhoop, sambhrani]";

(xxv) in S. No. 61, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3401	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent";

(xxvi) after S. No. 61 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"61A	3402	Organic surface-active agents (other than soap); surfaceactive preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401 [other than Sulphonated castor oil, fish oil or sperm oil]
61B	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals";

(xxvii) after S. No. 62 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"62A	3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404";

(xxviii) after S. No. 71 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"71A	3602	Prepared explosives, other than propellant powders; such as Industrial explosives";

(xxix) after S. No. 72 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"72A	3604	Fireworks, signalling flares, rain rockets, fog signals and other pyrotechnic articles";

(xxx) after S. No. 73 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"73A	3606	Ferro-cerium and other pyrophoric alloys in all forms; articles of combustible materials as specified in Note 2 to this Chapter; such as liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters";

(xxxi) after S. No. 89 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"89A	3811	Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils";

(xxxii) after S. No. 90 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"90A	3813	Preparations and charges for fire-extinguishers; charged fire extinguishing grenades
90B	3814	Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers";

(xxxiii) after S. No. 94 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"94A	3819	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals
94B	3820	Anti-freezing preparations and prepared de-icing fluids";

(xxxiv) after S. No. 104 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"104A	3918	Floor coverings of plastics, whether or not self-adhesive, in rolls or in form of tiles; wall or ceiling coverings of plastics";

(xxxv) after S. No. 107 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"107A	3922	Baths, shower baths, sinks, wash basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics";

(xxxvi) in S. No. 111, for the entry in column (3), the entry "Other articles of plastics and articles of other materials of headings 3901 to 3914 [other than bangles of plastic, plastic beads and feeding bottles]" shall be substituted;

(xxxvii) after S. No. 121 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"121A	4013	Inner tubes of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyre tubes]";

(xxxviii) in S. No. 123A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"4016	Other articles of vulcanised rubber other than hard rubber [other than erasers, rubber bands]";

(xxxix) after S. No. 123A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"123B	4017	Hard rubber (for example ebonite) in all forms, other than waste and scrap; articles of hard rubber
123C	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material";

(xl) in S. No. 124, for the entry in column (3), the entry "Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travellingbags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco- pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper [other than handbags and shopping bags, of cotton or jute]" shall be substituted;

(xli) after S. No. 124 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"124A	4203	Articles of apparel and clothing accessories, of leather or of composition leather [other than gloves specially designed for use in sports]
124B	4205	Other articles of leather or of composition leather

124C	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons”;

(xlii) S. No. 125, 126, 127, 128, 129 and 130 and the entries relating thereto shall be omitted;

(xliii) after S. No. 132 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“132A	4303	Articles of apparel, clothing accessories and other articles of furskin”;

(xliv) in S. No. 133, for the entry in column (3), the entry “Artificial fur and articles thereof” shall be substituted;

(xlv) after S. No. 137 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“137A	4410	Particle board, Oriented Strand Board and similar board (for example, wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances, other than specified boards
137B	4411	Fibre board of wood or other ligneous materials, whether or not bonded with resins or other organic substances, other than specified boards
137C	4412	Plywood, veneered panels and similar laminated wood
137D	4413	Densified wood, in blocks, plates, strips, or profile shapes
137E	4414	Wooden frames for paintings, photographs, mirrors or similar objects
137F	4418	Builders’ joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes
137G	4421	Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware”;

(xlvi) after S. No. 150 and the entries relating thereto, the following serial number and the entry shall be inserted, namely: -

“150A	4814	Wall paper and similar wall coverings; window transparencies of paper”;

(xlvii) after S. No. 153 and the entries relating thereto, the following serial number and the entry shall be inserted, namely: -

“153A	4819 20	Cartons, boxes and cases of non-corrugated paper or paper board”;

(xlviii) in S. No. 175, for the entry in column (3), the entry "Other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed" shall be substituted;

(xlix) in S. No. 177 A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit";

(l) after S. No. 177A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"177B	6703	Wool or other animal hair or other textile materials, prepared for use in making wigs or the like
177C	6704	Wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of textile materials; articles of human hair not elsewhere specified or included
177D	6801	Setts, curbstones and flagstones, of natural stone (except slate)
177E	6802	Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and power, of natural stone (including slate) [other than statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone]
177F	6803	Worked slate and articles of slate or of agglomerated slate";

(li) after S. No. 180 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"180A	6807	Articles of asphalt or of similar material (for example, petroleum bitumen or coal tar pitch)
180B	6808	Panels, boards, tiles, blocks and similar articles of vegetable fibre, of straw or of shavings, chips, particles, sawdust or other waste, of wood, agglomerated with cement, plaster or other mineral binders
180C	6809	Articles of plaster or of compositions based on plaster; such as Boards, sheets, panels, tiles and similar articles, not ornamented";

(lii) in S. No. 181, for the entry in column (3), the entry "Articles of cement, of concrete or of artificial stone, whether or not reinforced" shall be substituted;

(liii) after S. No. 182 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“182A	6812	Fabricated asbestos fibres; mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate; articles of such mixtures or of asbestos (for example, thread, woven fabric, clothing, headgear, footwear, gaskets), whether or not reinforced, other than goods of heading 6811 or 6813
182B	6813	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other materials
182C	6814	Worked mica and articles of mica, including agglomerated or reconstituted mica, whether or not on a support of paper, paperboard or other materials
182D	6815	Articles of stone or of other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat), not elsewhere specified or included [other than fly ash bricks, fly ash blocks, fly ash aggregate with 90 percent or more fly ash content]
182E	6901	Blocks, tiles and other ceramic goods of siliceous fossil meals (for example, kieselguhr, tripolite or diatomite) or of similar siliceous earths”;

(liv) after S. No. 184 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“184A	6904	Ceramic flooring blocks, support or filler tiles and the like
184B	6905	Chimney-pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods”;
180C	6809	Articles of plaster or of compositions based on plaster; such as Boards, sheets, panels, tiles and similar articles, not ornamented”;

(lv) in S. No. 185, for the entry in column (3), the entry “Ceramic pipes, conduits, guttering and pipe fittings” shall be substituted;

(lvi) after S. No. 185 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“185A	6907	Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics
185B	6909	Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods

185C	6910	Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures
185D	6914	Other ceramic articles”;

(lvii) after S. No. 189 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“189A	7003	Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
189B	7004	Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
189C	7005	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or nonreflecting layer, but not otherwise worked
189D	7006 00 00	Glass of heading 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials
189E	7007	Safety glass, consisting of toughened (tempered) or laminated glass
189F	7008	Multiple-walled insulating units of glass
189G	7009	Glass mirrors, whether or not framed, including rear-view mirrors”;

(lviii) after S. No. 190 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“190A	7011	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like”;

(lix) after S. No. 191 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“191A	7014	Signalling glassware and optical elements of glass (other than those of heading 7015), not optically worked”;

(lx) after S. No. 192 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“192A	7016	Paving blocks, slabs, bricks, squares, tiles and other articles of pressed or moulded glass, whether or not wired, of a kind used for building or construction purposes; glass cubes and other glass smallwares, whether or not on a backing, for mosaics or similar decorative purposes; leaded lights and the like; multi-cellular or foam glass in blocks, panels, plates, shells or similar forms”;

(lxi) after S. No. 195 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"195A	7020	Other articles of glass [other than Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns]";

(lxii) in S. No. 235, for the entry in column (3), the entry "Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel [other than Kerosene burners, kerosene stoves and wood burning stoves of iron or steel]" shall be substituted;

(lxiii) after S. No. 235 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"235A	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel";

(lxiv) after S. No. 236 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"236A	7324	Sanitary ware and parts thereof, of iron and steel";

(lxv) in S. No. 237, for the entry in column (3), the entry "Other cast articles of iron or steel" shall be substituted;

(lxvi) in S. No. 238, for the entry in column (3), the entry "Other articles of iron or steel" shall be substituted;

(lxvii) after S. No. 252 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"252A	7418	All goods [other than table, kitchen or other household articles of copper; Utensils]";

(lxviii) in S. No. 253, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"7419	Other articles of copper";

(lxix) in S. No. 262, for the entry in column no. 3, the entry "Unwrought Aluminium" shall be substituted;

(lxx) in S. No. 271, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures";	

(lxxi) in S. No. 275, for the entry in column (3), the entry "Stranded wires, cables, plaited bands and the like, of aluminium, not electrically insulated" shall be substituted;

(lxxii) after S. No. 275 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"275A	7615	All goods [other than table, kitchen or other household articles, of aluminium; Utensils]";

(lxxiii) after S. No. 301 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"301A	8212	Razors and razor blades (including razor blade blanks in strips)";

(lxxiv) after S. No. 302 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"302A	8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives,); manicure or pedicure sets and instruments (including nail files) [other than paper knives, pencil sharpeners and blades therefor]";

(lxxv) in S. No. 303A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hatracks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal";	

(lxxvi) after S. No. 303A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"303B	8303	Armoured or reinforced safes, strong-boxes and doors and safe deposit lockers for strong-rooms, cash or deed boxes and the like, of base metal
303C	8304	Filing cabinets, card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment, of base metal, other than office furniture of heading 9403

303D	8305	Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal”;

(lxxvii) after S. No. 307 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“307A	8310	Sign-plates, name-plates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading 9405”;

(lxxviii) in S. No. 316, for the entry in column (3), the “Turbo-jets, turbo-propellers and other gas turbines [other than aircraft engines]” shall be substituted;

(lxxix) after S. No. 317 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“317A	8413	Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]
317B	8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters [other than bicycle pumps, other hand pumps and parts of air or vacuum pumps and compressors of bicycle pumps]”;

(lxxx) in S. No. 320, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

“8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]”;

(lxxxi) in S. No. 324, for the entry in column (3), the entry “Weighing machinery (excluding balances of a sensitivity of 5 centigrams or better), including weight operated counting or checking machines; weighing machine weights of all kinds” shall be substituted;

(lxxxii) in S. No. 325, for the entry in column (3), the entry “Mechanical appliances (whether or not hand-operated) for projecting,

dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers]" shall be substituted;

(lxxxiii) after S. No. 327 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"327A	8427	Fork-lift trucks; other works trucks fitted with lifting or handling equipment
327B	8428	Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics)
327C	8429	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers
327D	8430	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; piledrivers and pile-extractors; snow-ploughs and snowblowers";

(lxxxiv) in S. No. 335, for the entry in column (3), the entry "Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof" shall be substituted;

(lxxxv) in S. No. 361, for the entry in column (3), the entry "Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin sorting machines, coin counting or wrapping machines, pencil sharpening machines, perforating or stapling machines) [other than Braille typewriters, electric or non-electric]" shall be substituted;

(lxxxvi) after S. No. 364 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"364A	8476	Automatic goods-vending machines (for example, postage stamps, cigarette, food or beverage machines), including money changing machines";

(lxxxvii) after S. No. 365 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"365A	8478	Machinery for preparing or making up tobacco, not specified or included elsewhere in this chapter";

(lxxxviii) in S. No. 366, for the entry in column (3), the entry "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter [other than Composting Machines]" shall be substituted;

(lxxxix) in S. No. 369A, for the entry in column (3), the entry "Crank shaft for sewing machine, bearing housings; plain shaft bearings; gears and gearing; ball or roller screws" shall be substituted;

(xc) after S. No. 369A and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"369B	8484	Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals";

(xci) in S. No. 375, for the entry in column (3), the entry "Electrical transformers, static converters (for example, rectifiers) and inductors" shall be substituted;

(xcii) after S. No. 376 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"376A	8506	Primary cells and primary batteries
376B	8512	Electrical lighting or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles
376C	8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512";

(xciii) in S. No. 379, for the entry in column (3), the entry "Telephone sets; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528 [other than telephones for cellular networks or for other wireless networks]" shall be substituted;

(xciv) in S. No. 380, for the entry in column (3), the entry "Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone

and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier set" shall be substituted;

(xcv) after S. No. 380 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"380A	8519	Sound recording or reproducing apparatus";

(xcvi) after S. No. 381 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"381A	8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 or 8521";

(xcvii) in S. No. 383, for the entry in column (3), the entry "Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras [other than two-way radio (Walkie talkie) used by defence, police and paramilitary forces etc]" shall be substituted;

(xcviii) after S. No. 383 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"383A	8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus
383B	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock";

(xcix) after S. No. 384 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"384A	8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528
384B	8530	Electrical signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608)
384C	8531	Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530";

(c) after S. No. 388 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"388A	8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lampholders, and other connectors, junction boxes), for a voltage not exceeding 1,000 volts : connectors for optical fibres, optical fibre bundles or cables
388B	8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517";

(ci) in S. No. 390, for the entry in column (3), the entry "Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps [other than LED lamps]" shall be substituted;

(cii) in S. No. 395, for the entry in column (3), the entry "Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors" shall be substituted;

(ciii) in S. No. 396, for the entry in column (3), the entry "Carbon electrodes, carbon brushes, Lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of a kind used for electrical purposes" shall be substituted;

(civ) after S. No. 397 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"397A	8547	Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for the purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material";

(cv) S. No. 410, and the entries relating thereto, shall be omitted;

(cvi) in S. No. 411, for the entry in column (3), the entry "Spectacles [other than corrective]; goggles including those for correcting vision" shall be substituted;

(cvii) after S. No. 411 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“411A	9005	Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy
411B	9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539
411C	9007	Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus
411D	9008	Image projectors, other than cinematographic; photographic (other than cinematographic) enlargers and reducers
411E	9010	Apparatus and equipment for photographic (including cinematographic) laboratories, not specified or included elsewhere in this Chapter; negatoscopes; projection screens
411F	9011	Compound optical microscopes, including those for photomicrography cinephotomicrography or microprojection
411G	9012	Microscopes other than optical microscopes; diffraction apparatus
411H	9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter
411-I	9014	Direction finding compasses; other navigational instruments and appliances
411J	9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders”;

(cviii) in S. No. 412, for the entry in column (3), the entry “Balances of a sensitivity of 5 cg or better, with or without weights” shall be substituted;

(cix) after S. No. 413 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“413A	9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations [other than those for medical, surgical, dental or veterinary uses], including radiography or radiotherapy apparatus, Xray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examinations or treatment tables, chairs and the like

413B	9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses”;

(cx) after S. No. 423 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“423A	9101	Wrist-watches, pocket-watches and other watches, including stop-watches, with case of precious metal or of metal clad with precious metal
423B	9102	Wrist-watches, pocket-watches and other watches, including stop watches, other than those of heading 9101”;

(cxi) after S. No. 424 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“424A	9104	Instrument panel clocks and clocks of a similar type for vehicles, aircraft, spacecraft or vessels”;

(cxii) after S. No. 425 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“425A	9106	Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor (for example, time-registers, time-recorders)
425B	9107	Time switches with clock or watch movement or with synchronous motor

(cxiii) in S. No. 427, for the entry in column (3), the entry “Other clock or watch parts” shall be substituted;

(cxiv) in S. No. 428, for the entry in column (3), the entry “Complete watch or clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock movements, assembled; rough watch or clock movements” shall be substituted;

(cxv) after S. No. 428 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“428A	9111	Watch cases and parts thereof”;

(cxvi) in S. No. 429, for the entry in column (3), the entry “Clock cases and cases of a similar type for other goods of this chapter, and parts thereof” shall be substituted;

(cxvii) after S. No. 429 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"429A	9113	Watch straps, watch bands and watch bracelets, and parts thereof";
429B	9201	Pianos, including automatic pianos; harpsi-chords and other keyboard stringed instruments
429C	9202	Other string musical instruments (for example, guitars, violins, harps)
429D	9205	Wind musical instruments (for example, keyboard pipe organs, accordions, clarinets, trumpets, bagpipes), other than fairground organs and mechanical street organs
429E	9206 00 00	Percussion musical instruments (for example, drums, xylophones, cymbols, castanets, maracas)
429F	9207	Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions)
429G	9208	Musical boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signalling instruments
429H	9209	Parts (for example, mechanisms for musical boxes) and accessories (for example, cards, discs and rolls for mechanical instruments) of musical instruments; metronomes, tuning forks and pitch pipes of all kinds";

(cxviii) after S. No. 435 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"435A	9401 [other than 9401 10 00]	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof [other than seats of a kind used for aircraft]";

(cxix) in S. No. 437, for the entry in column (3), the entry "Other furniture [other than furniture wholly made of bamboo, cane or rattan] and parts thereof" shall be substituted;

(cxx) in S. No. 438, for the entry in column (3), the entry "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered [other than coir products (except coir mattresses), products wholly made of quilted textile materials and cotton quilts]" shall be substituted;

(cxxi) after S. No. 438 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“438A	9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included [other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)]”;

(cxxii) after S. No. 440 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“440A	9505	Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes”;

(cxxiii) in S. No. 441, for the entry in column (3), the entry “Articles and equipment for general physical exercise, gymnastics, athletics, swimming pools and padding pools [other than sports goods]” shall be substituted;

(cxxiv) after S. No. 441 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“441A	9508	Roundabouts, swings, shooting galleries and other fairground amusements; [other than travelling circuses and travelling menageries]
441B	9602	Worked vegetable or mineral carving material and articles of these materials moulded or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin”;

(cxxv) after S. No. 448 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“448A	9611	Date, sealing or numbering stamps, and the like (including devices for printing or embossing labels), designed for operating in the hand; hand-operated composing sticks and hand printing sets incorporating such composing sticks”;

(cxxvi) in S. No. 449A, for the entry in column no. 3, the entry “Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints or wicks” shall be substituted;

(cxxvii) after S. No. 449A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“449B	9617	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners

449C	9618	Tailors' dummies and other lay figures; automata and other animated displays, used for shop window dressing”;

(cxxviii) after S. No. 452O and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“452P	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software” ;

(D) in Schedule-IV-14%, -

(i) S. Nos. 2, 3, 4, 5, 6,7, 8, 9, 11, 16, 17, 19, 23, 25, 26, 27, 28, 29, 30, 31 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and the entries relating thereto, shall be omitted;

(ii) in S.No. 46, in column (3), for the words in the brackets, “and Rear Tractor tyres”, the words “rear tractor tyres; and of a kind used on aircraft”, shall be added;

(iii) S. Nos. 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113 and the entries relating thereto, shall be omitted;

(iv) in S. No. 114, for the entry in column (3), the entry “Spark-ignition reciprocating or rotary internal combustion piston engine [other than aircraft engines]” shall be substituted;

(v) in S.No. 117, in column (3), the words, figures and brackets “concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60], [other than hand pumps falling under tariff item 8413 11 10]” shall be omitted;

(vi) S. Nos. 118, 121, 123, 124, 125, 126, 127, 128, 129, 131, 132, 133, 134 and the entries relating thereto, shall be omitted;

(vii) in S.No. 135, for the entry in column (3), the entry “Transmission shafts (including cam shafts and crank shafts) and cranks (excluding crankshaft for sewing machine); gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)” shall be substituted;

(viii) S. Nos. 136, 137, 138 and the entries relating thereto, shall be omitted;

(ix) in S.No. 141, in column (3), after the words and figures “heading 8508” the words and brackets “[other than wet grinder consisting of stone as a grinder]” shall be added;

(x) S. Nos. 144, 145, 147, 148, 149, 150 and the entries relating thereto, shall be omitted;

(xi) in S.No. 151, for the entry in column (3), the entry “Digital cameras and video camera recorders [other than CCTV]” shall be substituted;

(xii) S. Nos. 152, 153 and the entries relating thereto, shall be omitted;

(xiii) in S.No. 154, in column (3), after the words and figures in the brackets, “not exceeding 20 inches”, the words “ ; and set top box for television” shall be added;

(xiv) S. Nos. 155, 156, 157, 158, 159, 160, 161, 162, 163, 172, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214 and the entries relating thereto, shall be omitted;

(xv) S. Nos. 216, 217, 218, 220, 221, 222, 225, 226 and the entries relating thereto, shall be omitted;

(xvi) in S.No. 228, for the entry “-” in column (2), the entry “Any Chapter” shall be substituted.

(E) in Schedule-V-1.5%, in S. No. 13, for the words “of metal clad with precious metal”, the words and brackets “of metal clad with precious metal [other than bangles of lac/shellac]”, shall be substituted;

(F) in the explanation, in clause (ii), for sub-clause (b), the following shall be substituted, namely:-

“(b) The phrase “registered brand name” means,-

(A) a brand registered as on the 15th May 2017 or thereafter under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently de-registered;

(B) a brand registered as on the 15th May2017 or thereafter under the Copyright Act, 1957(14 of 1957);

(C) a brand registered as on the 15th May 2017 or thereafter under any law for the time being in force in any other country.";

2. This notification shall come into force on the 15th day of November 2017.

[F.No.354/320/2017-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Amend Notification No. 2/2017 - Central Tax (Rate) Dated 28.06.2017 To Give Effect to GST Council Decisions Regarding GST Exemptions

Notification No. 42/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.2/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 674(E), dated the 28th June, 2017, namely:-

In the said notification, -

(1) in the Schedule,

(i) for S. Nos. 8 and 9 and the entries relating thereto, the following shall be substituted, namely: -

"8	0203, 0204, 0205, 0206, 0207, 0208, 0209	All goods, fresh or chilled
9	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]";

(ii) S. Nos. 10,11,12,13,14,15,16,17 and the entries thereof shall be omitted;

(iii) for S. Nos. 21 and 22 and the entries relating thereto, the following shall be substituted, namely: -

"21	0304, 0306, 0307, 0308	All goods, fresh or chilled
22	0303, 0304, 0305, 0306, 0307, 0308	All goods [other than fresh or chilled] and other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(iv) S. Nos. 23,24 and the entries thereof shall be omitted;

(v) after S. No. 30 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"30A	0504	All goods, fresh or chilled
30B	0504	All goods [other than fresh or chilled] other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(vi) after S. No. 43 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"43A	0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen, other than those put up in unit container and, - (a) bearing a registered brand name; or (b) `bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(vii) in S. No. 46, in column (3), for the words "fresh or chilled" the words "fresh or chilled, dried" shall be substituted;

(viii) after S. No. 46 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"46A	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]
30B	0504	46B 08 Dried makhana, whether or not shelled or peeled [other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]";

(ix) in S. No. 77, in the entry in column (3), for the words "Flour of potatoes" the words "Flour, powder, flakes, granules or pellets of potatoes", shall be substituted;

(x) after S. No. 78 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"78A	1106 10 10	Guar meal" ;

(xi) after S. No. 87 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"87A	1210 10 00	Hop cones, neither ground nor powdered nor in the form of pellets" ;

(xii) after S. No. 93 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"93A	1404 90 60	coconut shell, unworked";

(xiii) in S. No. 94, for the entry in column 3, the entry "Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar" shall be substituted;

(xiv) in S. No. 103, for the entry in column (3), the entry "Salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solutions or containing added anti-caking or free flowing agents; sea water", shall be substituted;

(xv) after S. No. 103 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"103A	26	Uranium Ore Concentrate";

(xvi) after S. No. 136 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"136A	7113	Bangles of lac/ shellac";

(2) in the Explanation, in clause (ii), for sub-clause (b), the following sub-clause shall be substituted, namely: -

(b) The phrase "registered brand name" means, -

(A) a brand registered as on or after the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(B) a brand registered as on or after the 15th May2017 under the Copyright Act, 1957(14 of 1957);

(C) a brand registered as on or after the 15th May2017 under any law for the time being in force in any other country.".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F.No.354/320/2017-TRU]
(Mohit Tewari)
Under Secretary to the Government of India

Seeks to Amend Notification No. 4/2017- Central Tax (Rate) Dated 28.06.2017 To Give Effect To gst council Decision Regarding Reverse Charge On Raw Cotton.

Notification No. 43/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.4/2017-

Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 676 (E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, -

(i) after Sl. No. 4 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"4A.	5201	Raw cotton	Agriculturist	Any registered person".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F. No. 354/320/2017- TRU]
(Ruchi Bisht)
Under Secretary to Government of India

Seeks to Amend Notification No. 5/2017- Central Tax (Rate) Dated 28.06.2017 To Give Effect To gst council Decisions Regarding Restriction Of ITC On Certain Fabrics.

Notification No. 44/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R.677(E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, for Sl. No. 6A and the entries relating thereto, the following entries shall be substituted, namely: -

"6A	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
6B	5801	Corduroy fabrics
6C	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F.No.354/320/2017-TRU]
(Mohit Tewari)
Under Secretary to the Government of India

Seeks to Provide Concessional GST Rate of 2.5% on Scientific and Technical Equipments Supplied to Public Funded Research Institutions.

Notification No. 45/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.….(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do , on the recommendations of the Council, hereby exempts the goods specified in column (3) of the Table below, from the so much of the central tax leviable thereon under section 9 of the said Act, as in in excess of the amount calculated at the rate of 2.5 per cent., when supplied to the institutions specified in the corresponding entry in column (2) of the Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table-

Table

S. No.	Name of the Institutions	Description of the goods	Conditions
(1)	(2)	(3)	(4)
1.	Public funded research institution other than a hospital or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a National Institute Technology/ Regional Engineering College	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of	(i) The goods are supplied to or for – (a) a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or

		prototypes received by an institution does not exceed fifty thousand rupees in financial year.	the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods; or (b) an institution registered with the Government of India in the Department of Scientific and Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods; (ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (iii) In the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.
2.	Research institution, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of prototypes received by an	(1) The institution is registered with the Government of India in the Department of Scientific and Research, which- (i) produces, at the time of supply, a certificate to the supplier from the head of the institution, in each case, certifying that the said goods are essential for research purposes and will be used for stated purpose only; (ii) in the case of supply of live animals for experimental purposes, the institution produces, at the time of

		institution does not exceed fifty thousand rupees in a financial year.	supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.
			(2) The goods falling under (1) above shall not be transferred or sold by the institution for a period of five years from the date of installation.
3.	Departments and laboratories of the Central Government and State Governments, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in a financial year.	(i) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (ii) in the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.
4.	Regional Cancer Centre (Cancer Institute)	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches.	(i) The goods are supplied to the Regional Cancer Centre registered with the Government of India, in the Department of Scientific and Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods; (ii) the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (iii) in case of supply of live animals for experimental purposes, the institution

			produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.

Explanation. - For the purposes of this notification, the expression, -

(a) "Public funded research institution" means a research institution in the case of which not less than fifty per-cent. of the recurring expenditure is met by the Central Government or the Government of any State or the administration of any Union territory;

(b) "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes -

(i) an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956) to be a deemed University for the purposes of this Act;

(ii) an institution declared by Parliament by law to be an institution of national importance;

(iii) a college maintained by, or affiliated to, a University;

(c) "Head" means -

(i) in relation to an institution, the Director thereof (by whatever name called);

(ii) in relation to a University, the Registrar thereof (by whatever name called);

(iii) in relation to a college, the Principal thereof (by whatever name called);

(d) "hospital" includes any Institution, Centre, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment.

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F. No. 354/320/2017-TRU]
(Ruchi Bisht)
Under Secretary to Government of India

Seeks To Amend Notification No. 11/2017-CT(R) So As To Specify Rate @2.5% For Standalone Restaurants and @9% for Other Restaurants, Reduce Rate of Job Work on "Handicraft Goods" @2.5% And To Substitute "Services Provided" In Item (vi) Against Sl No. 3 in Table.

Notification No. 46/2017-Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 9, subsection (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.11/2017- Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 690(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(i) against serial number 3, in column (3), in item (vi), for the words "Services provided", the words "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided" shall be substituted;

(ii) against serial number 7,-

(a) for item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.-	9	-";

"declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)].";

(b) for item (iii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(iii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air		
conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.		

(c) the item (iv) in column (3) and the entries relating thereto in columns (3), (4) and (5), shall be omitted;

(d) in item (ix), in column (3), for the entry, the following entry shall be substituted, namely:-

"(ix) Accommodation, food and beverage services other than (ii), (iii), (v), (vi), (vii) and (viii) above.

Explanation.- For the removal of doubt, it is hereby clarified that, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant

for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent shall attract central tax @ 2.5% without any input tax credit under item (i) above and shall not be levied at the rate as specified under this entry.";

(iii) against serial number 26, in column (3), in item (i), after sub-item (h), the following shall be inserted, namely: -

'(i) manufacture of handicraft goods.

Explanation. - The expression "handicraft goods" shall have the same meaning as assigned to it in the notification No. 32/2017 -Central Tax, dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1158 (E), dated the 15th September, 2017 as amended from time to time.'.

2. This notification shall come into force with effect from 15th of November, 2017.

[F. No.354/173/2017 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Amend Notification No. 12/2017-CT(R) So As To Extend Exemption To Admission To "Protected Monument" And To Consolidate Entry At Sl. No. 11A & 11B.

Notification No.47/2017- Central Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No.12/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of

India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 691(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(a) against serial number 11A, for the entry in column (3), the following entry shall be substituted namely: -

"Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.";

(b) the serial number 11B and the entries relating thereto, shall be omitted;

(c) after serial number 79 and the entries relating thereto, the following serial number and entries shall be inserted namely: -

(1)	(2)	(3)	(4)	(5)
"79A	Heading 9996	Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 (24 of 1958) or any of the State Acts, for the time being in force	Nil	Nil".

2. This notification shall come into force with effect from 15th of November, 2017.

[F. No.354/173/2017 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks To Amend Notification No. 1/2017- Integrated Tax (Rate) Dated 28.06.2017 To Give Effect to gst council Decisions Regarding GST Rates.

Notification No. 43/2017- Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-

Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 666(E), dated the 28th June, 2017, namely:-In the said notification,- In the said notification,-

(A) in Schedule I- 5%,-

(i) for S. No. 1 and the entries relating thereto, the following shall be substituted, namely: -

"1	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]" ;

(ii) for S. No. 2 and the entries relating thereto, the following shall be substituted, namely:-

"2	0303, 0304, 0305, 0306, 0307, 0308	All goods [other than fresh or chilled] and put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE]" ;

(iii) S. Nos. 3,4,5, 6 and the entries relating thereto shall be omitted;

(iv) in S. No. 16, for the entry in column (3), the entry "All goods [other than fresh or chilled] and put up in unit container and, -

(a) (a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be substituted;

(v) in S. No. 23, in the entry in column (3) , after the word "frozen", the words ", put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be inserted;

(vi) in S. No. 26, for the entry in column (3), the entry "Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets, put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be substituted;

(vii) in S. No. 27, for the entry in column (3) ,the entry "Cashew nuts, whether or not shelled or peeled, desiccated coconuts " shall be substituted;

(viii) in S. No. 30, in the entry in column (3) , after the words "shelled or peeled", the words ", put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE", shall be inserted;

(ix) in S. No. 58, in the entry in column (3) , after the words "Meal, powder," the words "Flour" , shall be inserted;

(x) S. No. 60 and the entries relating thereto shall be omitted;

(xi) in S. No. 66, in column (3), the words, "other than of seed quality" shall be omitted;

(xii) for S. No. 72 and the entries relating thereto, the following shall be substituted, namely:-

“72	1210 20 00	Hop cones, ground, powdered or in the form of pellets; lupulin” ;

(xiii) for S. No. 78 and the entries relating thereto, the following shall be substituted, namely:-

“78	1404 [other than 1404 90 10, 1404 90 40, 1404 90 50, 1404 90 60]	Vegetable products not elsewhere specified or included such as, Cotton linters, Soap nuts, Hard seeds, pips, hulls and nuts, of a kind used primarily for carving, Rudraksha seeds [other than bidi wrapper leaves (tendu), betel leaves, Indian katha, coconut shell, unworked] ” ;

(xiv) in S. No. 91, in column (3), the words, “khandsari sugar” shall be omitted;

(xv) in S. No. 92, for the entry in column (3), the entry “Palmyra sugar, mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets, gajak, khaja, khajuli, anarsa” shall be substituted;

(xvi) in S. No. 100 A, in column (3), after the words “Roasted Gram”, the words “, idli/dosa batter, chutney powder” shall be inserted;

(xvii) for S. No. 111 and the entries relating thereto, the following shall be substituted, namely:-

“111	2503	Sulphur of all kinds, other than sublimed sulphur, precipitated sulphur and colloidal sulphur ” ;

(xviii) in S. No. 135, in column (3), after the words, figures and letters “natural boric acid containing not more than 85% of H3BO3” the brackets and words “(calculated on dry weight)” shall be inserted;

(ix) after S. No. 156 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“156A	2621	Fly Ash ” ;

(xx) for S. No. 189 and the entries relating thereto, the following shall be substituted, namely:-

“189	4011 30 00	New pneumatic tyres, of rubber of a kind used on aircraft”;

(xxi) after S. No. 197 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“197A	4107	Leather further prepared after tanning or crusting, including parchment-dressed leather, of bovine (including buffalo) or equine animals, without hair on, whether or not split, other than leather of heading 4114
197B	4112	Leather further prepared after tanning or crusting, including parchment-dressed leather, of sheep or lamb, without wool on, whether or not split, other than leather of heading 4114
197C	4113	Leather further prepared after tanning or crusting, including parchment-dressed leather, of other animals, without wool or hair on, whether or not split, other than leather of heading 4114
197D	4114	Chamois (including combination chamois) leather; patent leather and patent laminated leather; metallised leather
197E	4115	Composition leather with a basis of leather or leather fibre, in slabs, sheets or strip, whether or not in rolls; parings and other waste of leather or of composition leather, not suitable for the manufacture of leather articles; leather dust, powder and flour” ;

(xxii) after S. No. 218A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“218B	5607	Jute twine, coir cordage or ropes
218C	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
218D	5609	Products of coir” ;

(xxiii) (xxiii) after S. No. 219A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“219AA	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs) ” ;

(xxiv) for S. No. 224 and the entries relating thereto, the following serial number and entries shall be substituted, namely:-

“224	63 [other than 6309]	Other made up textile articles, sets, of sale value not exceeding Rs. 1000 per piece ” ;

(xxv) after S. No. 224 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“224A	6309	Worn clothing and other worn articles; rags ” ;

(xxvi) after S. No. 225 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"225A	6815	Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content" ;

(xxvii) (xxvii) after S. No. 230 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"230A	8407 10 00, 8411	Aircraft engines " ;

(xxviii) in S. No. 234A, for the entry in column (3) ,the entry "E-waste Explanation: For the purpose of this entry, e-waste means electrical and electronic equipment listed in Schedule I of the E-Waste (Management) Rules, 2016 (published in the Gazette of India vide G.S.R. 338 (E) dated the 23rd March, 2016), whole or in part if discarded as waste by the consumer or bulk consumer" shall be substituted;

(xxix) after S. No. 257A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"257B	9401 10 00	Aircraft seats " ;

(xxx) for S. No. 259A and the entries relating thereto, the following serial numbers and the entries shall be substituted, namely:-

"259A	4016 or 9503	Toy balloons made of natural rubber latex
"259B	9507	Fishing hooks
259C	9601	Worked corals other than articles of coral";

(B) in Schedule II-12%,-

(i) S. Nos. 2,3,4,5,6,7,8,9,10, and the entries relating thereto shall be omitted;

(ii) for S. No. 11 and the entries relating thereto, the following shall be substituted,namely:-

"11	0402 91 10, 0402 99 20	Condensed milk" ;

(iii) in S. No. 14, in column (3), the words "and desiccated coconuts", shall be omitted;

(iv) after S. No. 32 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely:-

“32A	1701 91, 1701 99	All goods, including refined sugar containing added flavouring or colouring matter, sugar cubes (other than those which attract 5% or nil GST)
32B	1902	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared”;

(v) in S. No. 43, for the entry in column (3) ,the entry “Yeasts (active and inactive); other single cell micro-organisms, dead (but not including vaccines of heading 3002); prepared baking powders” shall be substituted;

(vi) for S. No. 44 and the entries relating thereto, the following shall be substituted, namely:-

“44	2103	All goods, including Sauces and preparations therefor, mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard, Curry paste, mayonnaise and salad dressings ” ;

(vii) in S. No. 45, in column (3), the words “ including idli or dosa batter” shall be omitted;

(viii) after S. No. 46 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“46A	2106 90 91	Diabetic foods ” ;

(ix) after S. No. 57 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“57A	2804 40 10	Medical grade oxygen ” ;

(x) for S. No. 70 and the entries relating thereto, the following shall be substituted, namely:-

“70	3215	All Goods, including printing ink, writing or drawing ink and other inks, whether or not concentrated or solid, fountain pen ink, ball pen ink” ;

(xi) S. No. 71, 86, 87, 88 and the entries relating thereto shall be omitted;

(xii) for S. Nos. 89, 90 and the entries relating thereto, the following shall be substituted, namely:-

“89	4202 22 20	Hand bags and shopping bags, of cotton
90	4202 22 30	Hand bags and shopping bags, of jute” ;

(xiii) in S. No. 139, in column (3), after the words “with rubber or plastics”, the brackets and words “[other than jute twine, coir cordage or ropes]” shall be inserted;

(xiv) S. No. 140, and the entries relating thereto shall be omitted;

(xv) in S. No. 141, in column (3), after the words “specified or included”, the brackets and words “[other than products of coir]” shall be inserted;

(xvi) S. No. 152, and the entries relating thereto shall be omitted;

(xvii) for S. No. 171 and the entries relating thereto, the following shall be substituted, namely:-

“171	63 [other than 6309]	Other made up textile articles, sets of sale value exceeding Rs. 1000 per piece [other than Worn clothing and other worn articles; rags] ” ;

(xviii) after S. No. 171A and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“171B	6505	Hats (knitted/crocheted) or made up from lace or other textile fabrics” ;

(xix) in S. No. 177, in column (3), the words, “Fly ash bricks” shall be omitted;

(xx) in S. No. 196, in column (3), after the words “sports-ground rollers”, the word, brackets and figures “; Parts [8432 90]” shall be inserted;

(xxi) in S. No. 197, in column (3), after the words and figures “of heading 8437”, the word, brackets and figures “; parts [8433 90 00]” shall be inserted;

(xxii) in S. No. 200, in column (3), for the words “Sewing machines”, the words and figures “Sewing machines, other than book-sewing machine of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machines needles and parts of sewing machines” shall be substituted;

(xxiii) after S. No. 201 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“201A	8509	Wet grinder consisting of stone as a grinder” ;

(xxiv) after S. No. 207 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"207A	8710	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons, and parts of such vehicles" ;

(xxv) for S. No. 215 and the entries relating thereto, the following shall be substituted, namely:-

"215	9003	Frames and mountings for spectacles, goggles or the like, and parts thereof" ;

(xxvi) in S. No. 216, in column (3), after the word "corrective", the brackets and words "[other than goggles for correcting vision]" shall be inserted;

(xxvii) in S. No. 221, for the entry in column (3) ,the entry "Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]" shall be substituted;

(xxviii) after S. No. 222 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"222A	9403	Furniture wholly made of bamboo, cane or rattan";

(xxix) in S. No. 231, in the entry in column (3), the words "fishing hooks", shall be omitted;

(xxx) after S. No. 242 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

(1)	(2)	(3)
"243	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software";

(C) in Schedule III-18%,-

(i) S. No. 1, and the entries relating thereto, shall be omitted;

(ii) S. No. 10, and the entries relating thereto, shall be omitted;

(iii) in S. No. 12, for the entry in column (3), the entry "Sugar confectionery [other than mishri, batasha, bura, sakar, khadi sakar, harda, sakariya, gatta, kuliya, elaichidana, lukumdana, chikkis like puffed rice chikki, peanut chikki, sesame chikki, til chikki, til patti, til revdi, sugar makhana, groundnut sweets and gajak]" ,shall be substituted;

(iv) after S. No. 12 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"12A	1804	Cocoa butter, fat and oil
12B	1805	Cocoa powder, not containing added sugar or sweetening matter
12C	1806	Chocolates and other food preparations containing cocoa";

(v) in S. No. 13, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"1901 [other than 1901 20 00]	Malt extract, food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40% by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5% by weight of cocoa calculated on a totally defatted basis not elsewhere specified or included [other than mixes and doughs for the preparation of bakers' wares of heading 1905]";

(vi) S. No. 14, and the entries relating thereto, shall be omitted;

(vii) in S. No. 16, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"1905	Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products[other than pizza bread, khakhra, plain chapatti or roti, bread, rusks, toasted bread and similar toasted products";

(viii) after S. No. 16 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"16A	2101 11, 2101 12 00	Extracts, essences and concentrates of coffee, and preparations with a basis of these extracts, essences or concentrates or with a basis of coffee";

(ix) S. Nos. 18, 19 and 20 and the entries relating thereto, shall be omitted;

(x) in S. No. 23, for the entry in column (3), the entry, "Food preparations not elsewhere specified or included [other than roasted gram, sweetmeats, batters including idli/dosa batter, namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form, khakhra, chutney powder, diabetic foods]"shall be substituted;

(xi) after S. No. 24 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"24A	2202 91 00, 2202 99 90	Other non-alcoholic beverages [other than tender coconut water]";

(xii) after S. No. 26 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"26A	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
26B	2516 12 00	Granite, other than blocks";

(xiii) S. No. 27, and the entries relating thereto, shall be omitted;

(xiv) in S. No. 30, for the entry in column (3), the entry "Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste [other than fly ash]" shall be substituted;

(xv) after S. No. 30 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"30A	2706	Tar distilled from other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars";

(xvi) in S. No. 33, for the entry in column (3), the entry "Petroleum oils and oils obtained from bituminous minerals, other than petroleum crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils; Avgas [other than kerosene PDS, petrol, diesel and ATF, not in GST]" shall be substituted;

(xvii) in S. No. 52, for the entry in column (3), the entry "Prepared pigments, prepared opacifiers, prepared colours, vitrifiable enamels, glazes, engobes (slips), liquid lustres, and other similar preparations of a kind used in ceramic, enamelling or glass industry; glass frit or other glass, in the form of powder, granules or flakes" shall be substituted;

(xviii) in S. No. 54A, for the entry in column (3), the entry "Artists', students' or signboard painters' colours, modifying tints, amusement colours and the like, in tablets, tubes, jars, bottles, pans or in similar forms or packings" shall be substituted;

(xix) S. No. 55, and the entries relating thereto, shall be omitted;

(xx) after S. No. 57 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"57A	3303	Perfumes and toilet waters";

(xxi) in S. No. 58, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations [other than kajal, Kumkum, Bindi, Sindur, Alta]";

(xxii) in S. No. 59, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3305	Preparations for use on the hair";

(xxiii) in S. No. 60, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3306	Preparations for oral or dental hygiene, including denture fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages [other than tooth powder]";

(xxiv) after S. No. 60 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

"60A	3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorisers, whether or not perfumed or having disinfectant properties [other than odoriferous preparations which operate by burning, agarbattis, lobhan, dhoop batti, dhoop, sambhrani]";

(xxv) in S. No. 61, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"3401	Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent";

(xxvi) after S. No. 61 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"61A	3402	Organic surface-active agents (other than soap); surfaceactive preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401 [other than Sulphonated castor oil, fish oil or sperm oil]

61B	3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals”;

(xxvii) after S. No. 62 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“62A	3405	Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404”;

(xxviii) after S. No. 71 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“71A	3602	Prepared explosives, other than propellant powders; such as Industrial explosives”;

(xxix) after S. No. 72 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“72A	3604	Fireworks, signalling flares, rain rockets, fog signals and other pyrotechnic articles”;

(xxx) after S. No. 73 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“73A	3606	Ferro-cerium and other pyrophoric alloys in all forms; articles of combustible materials as specified in Note 2 to this Chapter; such as liquid or liquefied-gas fuels in containers of a kind used for filling or refilling cigarette or similar lighters”;

(xxxi) after S. No. 89 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“89A	3811	Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils”;

(xxxii) after S. No. 90 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“90A	3813	Preparations and charges for fire-extinguishers; charged fireextinguishing grenades
90B	3814	Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers”;

(xxxiii) after S. No. 94 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“94A	3819	Hydraulic brake fluids and other prepared liquids for hydraulic transmission, not containing or containing less than 70% by weight of petroleum oils or oils obtained from bituminous minerals
94B	3820	Anti-freezing preparations and prepared de-icing fluids”;

(xxxiv) after S. No. 104 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“104A	3918	Floor coverings of plastics, whether or not self-adhesive, in rolls or in form of tiles; wall or ceiling coverings of plastics”;

(xxxv) after S. No. 107 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“107A	3922	Baths, shower baths, sinks, wash basins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware of plastics”;

(xxxvi) in S. No. 111, for the entry in column (3), the entry “Other articles of plastics and articles of other materials of headings 3901 to 3914 [other than bangles of plastic, plastic beads and feeding bottles]” shall be substituted;

(xxxvii) after S. No. 121 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“121A	4013	Inner tubes of rubber [other than of a kind used on/in bicycles, cycle-rickshaws and three wheeled powered cycle rickshaws; and Rear Tractor tyre tubes]”;

(xxxviii) in S. No. 123A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

“4016	Other articles of vulcanised rubber other than hard rubber [other than erasers, rubber bands]”;

(xxxix) after S. No. 123A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“123B	4017	Hard rubber (for example ebonite) in all forms, other than waste and scrap; articles of hard rubber
123C	4201	Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material”;

(xl) in S. No. 124, for the entry in column (3), the entry “Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travellingbags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map-cases, cigarette-cases, tobacco- pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder-boxes, cutlery cases and similar containers, of leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper [other than handbags and shopping bags, of cotton or jute]” shall be substituted;

(xli) after S. No. 124 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“124A	4203	Articles of apparel and clothing accessories, of leather or of composition leather [other than gloves specially designed for use in sports]
124B	4205	Other articles of leather or of composition leather
124C	4206	Articles of gut (other than silk-worm gut), of goldbeater's skin, of bladders or of tendons”;

(xlii) S. No. 125, 126, 127, 128, 129 and 130 and the entries relating thereto shall be omitted;

(xliii) after S. No. 132 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“132A	4303	Articles of apparel, clothing accessories and other articles of furskin”;

(xliv) in S. No. 133, for the entry in column (3), the entry “Artificial fur and articles thereof” shall be substituted;

(xlv) after S. No. 137 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“137A	4410	Particle board, Oriented Strand Board and similar board (for example, wafer board) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances, other than specified boards

137B	4411	Fibre board of wood or other ligneous materials, whether or not bonded with resins or other organic substances, other than specified boards
137C	4412	Plywood, veneered panels and similar laminated wood
137D	4413	Densified wood, in blocks, plates, strips, or profile shapes
137E	4414	Wooden frames for paintings, photographs, mirrors or similar objects
137F	4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes
137G	4421	Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware";

(xlvi) after S. No. 150 and the entries relating thereto, the following serial number and the entry shall be inserted, namely: -

"150A	4814	Wall paper and similar wall coverings; window transparencies of paper";

(xlvii) after S. No. 153 and the entries relating thereto, the following serial number and the entry shall be inserted, namely: -

"153A	4819 20	Cartons, boxes and cases of non-corrugated paper or paper board";

(xlviii) in S. No. 175, for the entry in column (3), the entry "Other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed" shall be substituted;

(xlix) in S. No. 177 A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit";

(l) after S. No. 177A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"177B	6703	Wool or other animal hair or other textile materials, prepared for use in making wigs or the like
177C	6704	Wigs, false beards, eyebrows and eyelashes, switches and the like, of human or animal hair or of textile materials; articles of human hair not elsewhere specified or included

177D	6801	Setts, curbstones and flagstones, of natural stone (except slate)
177E	6802	Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and power, of natural stone (including slate) [other than statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone]
177F	6803	Worked slate and articles of slate or of agglomerated slate";

(li) after S. No. 180 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"180A	6807	Articles of asphalt or of similar material (for example, petroleum bitumen or coal tar pitch)
180B	6808	Panels, boards, tiles, blocks and similar articles of vegetable fibre, of straw or of shavings, chips, particles, sawdust or other waste, of wood, agglomerated with cement, plaster or other mineral binders
180C	6809	Articles of plaster or of compositions based on plaster; such as Boards, sheets, panels, tiles and similar articles, not ornamented";

(lii) in S. No. 181, for the entry in column (3), the entry "Articles of cement, of concrete or of artificial stone, whether or not reinforced" shall be substituted;

(liii) after S. No. 182 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"182A	6812	Fabricated asbestos fibres; mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate; articles of such mixtures or of asbestos (for example, thread, woven fabric, clothing, headgear, footwear, gaskets), whether or not reinforced, other than goods of heading 6811 or 6813
182B	6813	Friction material and articles thereof (for example, sheets, rolls, strips, segments, discs, washers, pads), not mounted, for brakes, for clutches or the like, with a basis of asbestos, of other mineral substances or of cellulose, whether or not combined with textiles or other materials
182C	6814	Worked mica and articles of mica, including agglomerated or reconstituted mica, whether or not on a support of paper, paperboard or other materials
182D	6815	Articles of stone or of other mineral substances (including carbon fibres, articles of carbon fibres and articles of peat), not elsewhere specified or included [other than fly ash bricks, fly ash blocks, fly ash aggregate with 90 percent or more fly ash content]

182E	6901	Blocks, tiles and other ceramic goods of siliceous fossil meals (for example, kieselguhr, tripolite or diatomite) or of similar siliceous earths”;

(liv) after S. No. 184 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“184A	6904	Ceramic flooring blocks, support or filler tiles and the like
184B	6905	Chimney-pots, cowls, chimney liners, architectural ornaments and other ceramic constructional goods”;

(lv) in S. No. 185, for the entry in column (3), the entry “Ceramic pipes, conduits, guttering and pipe fittings” shall be substituted;

(lvi) after S. No. 185 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“185A	6907	Ceramic flags and paving, hearth or wall tiles; ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics
185B	6909	Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods
185C	6910	Ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures
185D	6914	Other ceramic articles”;

(lvii) after S. No. 189 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“189A	7003	Cast glass and rolled glass, in sheets or profiles, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
189B	7004	Drawn glass and blown glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked
189C	7005	Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or nonreflecting layer, but not otherwise worked
189D	7006 00 00	Glass of heading 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enamelled or otherwise worked, but not framed or fitted with other materials
189E	7007	Safety glass, consisting of toughened (tempered) or laminated glass
189F	7008	Multiple-walled insulating units of glass
189G	7009	Glass mirrors, whether or not framed, including rear-view mirrors”;

(lviii) after S. No. 190 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"190A	7011	Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like";

(lix) after S. No. 191 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"191A	7014	Signalling glassware and optical elements of glass (other than those of heading 7015), not optically worked";

(lx) after S. No. 192 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"192A	7016	Paving blocks, slabs, bricks, squares, tiles and other articles of pressed or moulded glass, whether or not wired, of a kind used for building or construction purposes; glass cubes and other glass smallwares, whether or not on a backing, for mosaics or similar decorative purposes; leaded lights and the like; multi-cellular or foam glass in blocks, panels, plates, shells or similar forms";

(lxi) after S. No. 195 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"195A	7020	Other articles of glass [other than Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns]";

(lxii) in S. No. 235, for the entry in column (3), the entry "Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron or steel [other than Kerosene burners, kerosene stoves and wood burning stoves of iron or steel]" shall be substituted;

(lxiii) after S. No. 235 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"235A	7322	Radiators for central heating, not electrically heated, and parts thereof, of iron or steel; air heaters and hot air distributors (including distributors which can also distribute fresh or conditioned air), not electrically heated, incorporating a motor-driven fan or blower, and parts thereof, of iron or steel";

(lxiv) after S. No. 236 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"236A	7324	Sanitary ware and parts thereof, of iron and steel";

(lxv) in S. No. 237, for the entry in column (3), the entry "Other cast articles of iron or steel" shall be substituted;

(lxvi) in S. No. 238, for the entry in column (3), the entry "Other articles of iron or steel" shall be substituted;

(lxvii) after S. No. 252 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"252A	7418	All goods [other than table, kitchen or other household articles of copper; Utensils]";

(lxviii) in S. No. 253, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"7419	Other articles of copper";

(lxix) in S. No. 262, for the entry in column no. 3, the entry "Unwrought Aluminium" shall be substituted;

(lxx) in S. No. 271, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"7610	Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures";

(lxxi) in S. No. 275, for the entry in column (3), the entry "Stranded wires, cables, plaited bands and the like, of aluminium, not electrically insulated" shall be substituted;

(lxxii) after S. No. 275 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"275A	7615	All goods [other than table, kitchen or other household articles, of aluminium; Utensils]";

(lxxiii) after S. No. 301 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"301A	8212	Razors and razor blades (including razor blade blanks in strips)";

(lxxiv) after S. No. 302 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“302A	8214	Other articles of cutlery (for example, hair clippers, butchers' or kitchen cleavers, choppers and mincing knives,); manicure or pedicure sets and instruments (including nail files) [other than paper knives, pencil sharpeners and blades therefor]”;

(lxxv) in S. No. 303A, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

“8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hatracks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal”;

(lxxvi) after S. No. 303A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“303B	8303	Armoured or reinforced safes, strong-boxes and doors and safe deposit lockers for strong-rooms, cash or deed boxes and the like, of base metal
303C	8304	Filing cabinets, card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment, of base metal, other than office furniture of heading 9403
303D	8305	Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal”;

(lxxvii) after S. No. 307 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“307A	8310	Sign-plates, name-plates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading 9405”;

(lxxviii) in S. No. 316, for the entry in column (3), the “Turbo-jets, turbo-propellers and other gas turbines [other than aircraft engines]” shall be substituted;

(lxxix) after S. No. 317 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“317A	8413	Concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60]
317B	8414	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters [other than bicycle pumps, other hand pumps and parts of air or vacuum pumps and compressors of bicycle pumps]”;

(lxxx) in S. No. 320, for the entry in columns (2) and (3), the following entries shall be substituted, namely:-

"8419	Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 8514), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric [other than Solar water heater and system]";

(lxxxi) in S. No. 324, for the entry in column (3), the entry "Weighing machinery (excluding balances of a sensitivity of 5 centigrams or better), including weight operated counting or checking machines; weighing machine weights of all kinds" shall be substituted;

(lxxxii) in S. No. 325, for the entry in column (3), the entry "Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines [other than and Nozzles for drip irrigation equipment or nozzles for sprinklers]" shall be substituted;

(lxxxiii) after S. No. 327 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"327A	8427	Fork-lift trucks; other works trucks fitted with lifting or handling equipment
327B	8428	Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics)
327C	8429	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers
327D	8430	Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; piledrivers and pile-extractors; snow-ploughs and snowblowers";

(lxxxiv) in S. No. 335, for the entry in column (3), the entry "Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof" shall be substituted;

(lxxxv) in S. No. 361, for the entry in column (3), the entry "Other office machines (for example, hectograph or stencil duplicating

machines, addressing machines, automatic banknote dispensers, coin sorting machines, coin counting or wrapping machines, pencil sharpening machines, perforating or stapling machines) [other than Braille typewriters, electric or non-electric]" shall be substituted;

(lxxxvi) after S. No. 364 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"364A	8476	Automatic goods-vending machines (for example, postage stamps, cigarette, food or beverage machines), including money changing machines";

(lxxxvii) after S. No. 365 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"365A	8478	Machinery for preparing or making up tobacco, not specified or included elsewhere in this chapter";

(lxxxviii) in S. No. 366, for the entry in column (3), the entry "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter [other than Composting Machines]" shall be substituted;

(lxxxix) in S. No. 369A, for the entry in column (3), the entry "Crank shaft for sewing machine, bearing housings; plain shaft bearings; gears and gearing; ball or roller screws" shall be substituted;

(xc) after S. No. 369A and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"369B	8484	Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals";

(xci) in S. No. 375, for the entry in column (3), the entry "Electrical transformers, static converters (for example, rectifiers) and inductors" shall be substituted;

(xcii) after S. No. 376 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"376A	8506	Primary cells and primary batteries
376B	8512	Electrical lighting or signalling equipment (excluding articles of heading 8539), windscreen wipers, defrosters and demisters, of a kind used for cycles or motor vehicles

376C	8513	Portable electric lamps designed to function by their own source of energy (for example, dry batteries, accumulators, magnetos), other than lighting equipment of heading 8512”;

(xciii) in S. No. 379, for the entry in column (3), the entry “Telephone sets; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528 [other than telephones for cellular networks or for other wireless networks]” shall be substituted;

(xciv) in S. No. 380, for the entry in column (3), the entry “Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones, whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier set” shall be substituted;

(xcv) after S. No. 380 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“380A	8519	Sound recording or reproducing apparatus”;

(xcvi) after S. No. 381 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“381A	8522	Parts and accessories suitable for use solely or principally with the apparatus of headings 8519 or 8521”;

(xcvii) in S. No. 383, for the entry in column (3), the entry “Closed-circuit television (CCTV), transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras [other than two-way radio (Walkie talkie) used by defence, police and paramilitary forces etc]” shall be substituted;

(xcviii) after S. No. 383 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“383A	8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus
383B	8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock”;

(xcix) after S. No. 384 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"384A	8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528
384B	8530	Electrical signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608)
384C	8531	Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530";

(c) after S. No. 388 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"388A	8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lampholders, and other connectors, junction boxes), for a voltage not exceeding 1,000 volts : connectors for optical fibres, optical fibre bundles or cables
388B	8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517";

(ci) in S. No. 390, for the entry in column (3), the entry "Electrical Filament or discharge lamps including sealed beam lamp units and ultra-violet or infra-red lamps; arc lamps [other than LED lamps]" shall be substituted;

(cii) in S. No. 395, for the entry in column (3), the entry "Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors" shall be substituted;

(ciii) in S. No. 396, for the entry in column (3), the entry "Carbon electrodes, carbon brushes, Lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of a kind used for electrical purposes" shall be substituted;

(civ) after S. No. 397 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“397A	8547	Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for the purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material”;

(cv) S. No. 410, and the entries relating thereto, shall be omitted;

(cvi) in S. No. 411, for the entry in column (3), the entry “Spectacles [other than corrective]; goggles including those for correcting vision” shall be substituted;

(cvii) after S. No. 411 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“411A	9005	Binoculars, monoculars, other optical telescopes, and mountings therefor; other astronomical instruments and mountings therefor, but not including instruments for radio-astronomy
411B	9006	Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539
411C	9007	Cinematographic cameras and projectors, whether or not incorporating sound recording or reproducing apparatus
411D	9008	Image projectors, other than cinematographic; photographic (other than cinematographic) enlargers and reducers
411E	9010	Apparatus and equipment for photographic (including cinematographic) laboratories, not specified or included elsewhere in this Chapter; negatoscopes; projection screens
411F	9011	Compound optical microscopes, including those for photomicrography cinephotomicrography or microprojection
411G	9012	Microscopes other than optical microscopes; diffraction apparatus
411H	9013	Liquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; other optical appliances and instruments, not specified or included elsewhere in this Chapter
411-I	9014	Direction finding compasses; other navigational instruments and appliances
411J	9015	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders”;

(cviii) in S. No. 412, for the entry in column (3), the entry "Balances of a sensitivity of 5 cg or better, with or without weights" shall be substituted;

(cix) after S. No. 413 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"413A	9022	Apparatus based on the use of X-rays or of alpha, beta or gamma radiations [other than those for medical, surgical, dental or veterinary uses], including radiography or radiotherapy apparatus, Xray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examinations or treatment tables, chairs and the like
413B	9023	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses";

(cx) after S. No. 423 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"423A	9101	Wrist-watches, pocket-watches and other watches, including stop-watches, with case of precious metal or of metal clad with precious metal
423B	9102	Wrist-watches, pocket-watches and other watches, including stop watches, other than those of heading 9101";

(cxi) after S. No. 424 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"424A	9104	Instrument panel clocks and clocks of a similar type for vehicles, aircraft, spacecraft or vessels";

(cxii) after S. No. 425 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"425A	9106	Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor (for example, time-registers, time-recorders)
425B	9107	Time switches with clock or watch movement or with synchronous motor

(cxiii) in S. No. 427, for the entry in column (3), the entry "Other clock or watch parts" shall be substituted;

(cxiv) in S. No. 428, for the entry in column (3), the entry "Complete watch or clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock movements, assembled; rough watch or clock movements" shall be substituted;

(cxv) after S. No. 428 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"428A	9111	Watch cases and parts thereof";

(cxvi) in S. No. 429, for the entry in column (3), the entry "Clock cases and cases of a similar type for other goods of this chapter, and parts thereof" shall be substituted;

(cxvii) after S. No. 429 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"429A	9113	Watch straps, watch bands and watch bracelets, and parts thereof";
429B	9201	Pianos, including automatic pianos; harpsi-chords and other keyboard stringed instruments
429C	9202	Other string musical instruments (for example, guitars, violins, harps)
429D	9205	Wind musical instruments (for example, keyboard pipe organs, accordions, clarinets, trumpets, bagpipes), other than fairground organs and mechanical street organs
429E	9206 00 00	Percussion musical instruments (for example, drums, xylophones, cymbols, castanets, maracas)
429F	9207	Musical instruments, the sound of which is produced, or must be amplified, electrically (for example, organs, guitars, accordions)
429G	9208	Musical boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signalling instruments
429H	9209	Parts (for example, mechanisms for musical boxes) and accessories (for example, cards, discs and rolls for mechanical instruments) of musical instruments; metronomes, tuning forks and pitch pipes of all kinds";

(cxviii) after S. No. 435 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"435A	9401 [other than 9401 10 00]	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof [other than seats of a kind used for aircraft]";

(cxix) in S. No. 437, for the entry in column (3), the entry "Other furniture [other than furniture wholly made of bamboo, cane or rattan] and parts thereof" shall be substituted;

(cxx) in S. No. 438, for the entry in column (3), the entry "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered [other than coir products (except coir mattresses), products wholly made of quilted textile materials and cotton quilts]" shall be substituted;

(cxxi) after S. No. 438 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"438A	9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included [other than kerosene pressure lantern and parts thereof including gas mantles; hurricane lanterns, kerosene lamp, petromax, glass chimney, and parts thereof; LED lights or fixtures including LED lamps; LED (light emitting diode) driver and MCPCB (Metal Core Printed Circuit Board)]";

(cxxii) after S. No. 440 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"440A	9505	Festive, carnival or other entertainment articles, including conjuring tricks and novelty jokes";

(cxxiii) in S. No. 441, for the entry in column (3), the entry "Articles and equipment for general physical exercise, gymnastics, athletics, swimming pools and padding pools [other than sports goods]" shall be substituted;

(cxxiv) after S. No. 441 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"441A	9508	Roundabouts, swings, shooting galleries and other fairground amusements; [other than travelling circuses and travelling menageries]
441B	9602	Worked vegetable or mineral carving material and articles of these materials moulded or carved articles of wax, of stearin, of natural gums or natural resins or of modelling pastes, and other moulded or carved articles, not elsewhere specified or included; worked, unhardened gelatin (except gelatin of heading 3503) and articles of unhardened gelatin";

(cxxv) after S. No. 448 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

“448A	9611	Date, sealing or numbering stamps, and the like (including devices for printing or embossing labels), designed for operating in the hand; hand-operated composing sticks and hand printing sets incorporating such composing sticks”;

(cxxvi) in S. No. 449A, for the entry in column no. 3, the entry “Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints or wicks” shall be substituted;

(cxxvii) after S. No. 449A and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

“449B	9617	Vacuum flasks and other vacuum vessels, complete with cases; parts thereof other than glass inners
449C	9618	Tailors' dummies and other lay figures; automata and other animated displays, used for shop window dressing”;

(cxxviii) after S. No. 452O and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

“452P	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software” ;

(D) in Schedule-IV-28%, -

(i) S. Nos. 2, 3, 4, 5, 6,7, 8, 9, 11, 16, 17, 19, 23, 25, 26, 27, 28, 29, 30, 31 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 and the entries relating thereto, shall be omitted;

(ii) in S.No. 46, in column (3), for the words in the brackets, “and Rear Tractor tyres”, the words “rear tractor tyres; and of a kind used on aircraft”, shall be added;

(iii) S. Nos. 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113 and the entries relating thereto, shall be omitted; 32

(iv) in S. No. 114, for the entry in column (3), the entry “Spark-ignition reciprocating or rotary internal combustion piston engine [other than aircraft engines]” shall be substituted;

(v) in S.No. 117, in column (3), the words, figures and brackets “concrete pumps [8413 40 00], other rotary positive displacement pumps [8413 60], [other than hand pumps falling under tariff item 8413 11 10]” shall be omitted;

(vi) S. Nos. 118, 121, 123, 124, 125, 126, 127, 128, 129, 131, 132, 133, 134 and the entries relating thereto, shall be omitted;

(vii) in S.No. 135, for the entry in column (3), the entry "Transmission shafts (including cam shafts and crank shafts) and cranks (excluding crankshaft for sewing machine); gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints)" shall be substituted;

(viii) S. Nos. 136, 137, 138 and the entries relating thereto, shall be omitted;

(ix) in S.No. 141, in column (3), after the words and figures "heading 8508" the words and brackets "[other than wet grinder consisting of stone as a grinder]" shall be added;

(x) S. Nos. 144, 145, 147, 148, 149, 150 and the entries relating thereto, shall be omitted;

(xi) in S.No. 151, for the entry in column (3), the entry "Digital cameras and video camera recorders [other than CCTV]" shall be substituted;

(xii) S. Nos. 152, 153 and the entries relating thereto, shall be omitted;

(xiii) in S.No. 154, in column (3), after the words and figures in the brackets, "not exceeding 20 inches", the words " ; and set top box for television" shall be added;

(xiv) S. Nos. 155, 156, 157, 158, 159, 160, 161, 162, 163, 172, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214 and the entries relating thereto, shall be omitted;

(xv) S. Nos. 216, 217, 218, 220, 221, 222, 225, 226 and the entries relating thereto, shall be omitted;

(xvi) in S.No. 228, for the entry "-" in column (2), the entry "Any Chapter" shall be substituted.

(E) in Schedule-V-3%, in S. No. 13, for the words "of metal clad with precious metal", the words and brackets "of metal clad with precious metal [other than bangles of lac/shellac]", shall be substituted;

(F) in the explanation, in clause (ii), for sub-clause (b), the following shall be substituted, namely:-

"(b) The phrase "registered brand name" means,-

(A) a brand registered as on the 15th May 2017 or thereafter under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently de-registered;

(B) a brand registered as on the 15th May2017 or thereafter under the Copyright Act, 1957(14 of 1957);

(C) a brand registered as on the 15th May 2017 or thereafter under any law for the time being in force in any other country.";

2. This notification shall come into force on the 15th day of November 2017.

[F.No.354/320/2017-TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Amend Notification No. 2/2017- Integrated Tax (Rate) Dated 28.06.2017 to Give Effect to GST Council Decisions Regarding GST Exemptions

Notification No. 44/2017- Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Goods and Services Tax Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.2/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 667(E), dated the 28th June, 2017, namely:-

In the said notification, -

(1) in the Schedule,

(i) for S. Nos. 8 and 9 and the entries relating thereto, the following shall be substituted, namely: -

"8	0203, 0204, 0205, 0206, 0207, 0208, 0209	All goods, fresh or chilled
9	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods [other than fresh or chilled] other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]";

(ii) S. Nos. 10,11,12,13,14,15,16,17 and the entries thereof shall be omitted;

(iii) for S. Nos. 21 and 22 and the entries relating thereto, the following shall be substituted, namely: -

"21	0304, 0306, 0307, 0308	All goods, fresh or chilled
22	0303, 0304, 0305, 0306, 0307, 0308	All goods [other than fresh or chilled] and other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(iv) S. Nos. 23,24 and the entries thereof shall be omitted;

(v) after S. No. 30 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"30A	0504	All goods, fresh or chilled
30B	0504	All goods [other than fresh or chilled] other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(vi) after S. No. 43 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"30A	0504	All goods, fresh or chilled

"43A	0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen, other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]" ;

(vii) in S. No. 46, in column (3), for the words "fresh or chilled" the words "fresh or chilled, dried" shall be substituted;

(viii) after S. No. 46 and the entries relating thereto, the following serial numbers and the entries shall be inserted, namely: -

"46A	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets other than those put up in unit container and, - (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]
46B	08	Dried makhana, whether or not shelled or peeled [other than those put up in unit container and,- (a) bearing a registered brand name; or (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or enforceable right in respect of such brand name has been foregone voluntarily], subject to the conditions as in the ANNEXURE I]";

(ix) in S. No. 77, in the entry in column (3), for the words "Flour of potatoes" the words "Flour, powder, flakes, granules or pellets of potatoes", shall be substituted;

(x) after S. No. 78 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"78A	1106 10 10	Guar meal" ;

(xi) after S. No. 87 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"87A	1210 10 00	Hop cones, neither ground nor powdered nor in the form of pellets" ;

(xii) after S. No. 93 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"93A	1404 90 60	coconut shell, unworked";

(xiii) in S. No. 94, for the entry in column 3, the entry "Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar" shall be substituted;

(xiv) in S. No. 103, for the entry in column (3), the entry "Salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solutions or containing added anti-caking or free flowing agents; sea water", shall be substituted;

(xv) after S. No. 103 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"103A	26	Uranium Ore Concentrate";

(xvi) after S. No. 136 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"136A	7113	Bangles of lac/ shellac";

(2) in the Explanation, in clause (ii), for sub-clause (b), the following sub-clause shall be substituted, namely: -

(b) The phrase "registered brand name" means, -

(A) a brand registered as on or after the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;

(B) a brand registered as on or after the 15th May2017 under the Copyright Act, 1957(14 of 1957);

(C) a brand registered as on or after the 15th May2017 under any law for the time being in force in any other country.".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F.No.354/320/2017-TRU]
(Mohit Tewari)
Under Secretary to the Government of India

Seeks to Amend Notification No. 4/2017- Integrated Tax (Rate) Dated 28.06.2017 to Give Effect to GST Council Decision Regarding Reverse Charge on Raw Cotton

Notification No. 45/2017- Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (3) of section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on the recommendations of the Council, the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.4/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 669 (E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, -

(i) after Sl. No. 4 and the entries relating thereto, the following serial number and the entries shall be inserted, namely: -

"4A.	5201	Raw cotton	Agriculturist	Any registered person".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F. No. 354/320/2017- TRU]
(Ruchi Bisht)
Under Secretary to Government of India

Seeks to Amend Notification No. 5/2017- Integrated Tax (Rate) Dated 28.06.2017 to Give Effect to gst council Decisions Regarding Restriction of ITC on Certain Fabrics.

Notification No. 46/2017-Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods

and Services Tax Act, 2017 (13 of 2017) the Central Government, on the recommendations of the Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.5/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 670(E), dated the 28th June, 2017, namely:-

In the said notification, in the TABLE, for Sl. No. 6A and the entries relating thereto, the following entries shall be substituted, namely: -

"6A	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
6B	5801	Corduroy fabrics
6C	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)".

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F.No.354/320/2017-TRU]
(Mohit Tewari)
Under Secretary to the Government of India

Seeks to Provide Concessional GST Rate of 5% on Scientific and Technical Equipments Supplied to Public Funded Research Institutions

Notification No. 47/2017-Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.….(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) (hereafter in this notification referred to as "the said Act"), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts the goods specified in column (3) of the Table below, from the so much of the integrated tax leviable thereon under section 5 of the said Act, as in in excess of the amount calculated at the rate of 5 per cent., when supplied to the institutions specified in the corresponding entry in column (2) of the Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table-

Table

S. No.	Name of the Institutions	Description of the goods	Conditions
1.	Public funded research institution other than a hospital or a University or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a National Institute Technology/ Regional Engineering College	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d)Prototypes, the aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in financial year.	(i) The goods are supplied to or for – (a) a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and such institution produces a certificate to that effect from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union Territory in the concerned department to the supplier at the time of supply of the specified goods; or (b) an institution registered with the Government of India in the Department of Scientific and Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods; (ii) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (iii) In the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required

			for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.
2.	Research institution, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in a financial year.	(1) The institution is registered with the Government of India in the Department of Scientific and Research, which- (i) produces, at the time of supply, a certificate to the supplier from the head of the institution, in each case, certifying that the said goods are essential for research purposes and will be used for stated purpose only; (ii) in the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals. (2) The goods falling under (1) above shall not be transferred or sold by the institution for a period of five years from the date of installation.
3.	Departments and laboratories of the Central Government and State Governments, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes, the aggregate value of prototypes received by an institution does not exceed fifty thousand rupees in a financial year.	(i) The institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (ii) in the case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the

			Committee for the Purpose of Control and Supervision of Experiments on Animals
4.	Regional Cancer Centre (Cancer Institute)	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (experimental purpose); (c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches.	(i) The goods are supplied to the Regional Cancer Centre registered with the Government of India, in the Department of Scientific and Research and such institution produces a certificate from an officer not below the rank of the Deputy Secretary to the Government of India or the Deputy Secretary to the State Government or the Deputy Secretary in the Union territory in concerned department to the supplier at the time of supply of the specified goods; (ii) the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution, in each case, certifying that the said goods are required for research purposes only; (iii) in case of supply of live animals for experimental purposes, the institution produces, at the time of supply, a certificate to the supplier from the Head of the Institution that the live animals are required for research purposes and enclose a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.

Explanation. - For the purposes of this notification, the expression, -

(a) "Public funded research institution" means a research institution in the case of which not less than fifty per-cent. of the recurring expenditure is met by the Central Government or the Government of any State or the administration of any Union territory;

(b) "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes -

(i) an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956) to be a deemed University for the purposes of this Act;

(ii) an institution declared by Parliament by law to be an institution of national importance;

(iii) a college maintained by, or affiliated to, a University;

(c) "Head" means -

(i) in relation to an institution, the Director thereof (by whatever name called);

(ii) in relation to a University, the Registrar thereof (by whatever name called);

(iii) in relation to a college, the Principal thereof (by whatever name called);

(d) "hospital" includes any Institution, Centre, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment.

2. This notification shall come into force with effect from the 15th day of November, 2017.

[F. No. 354/320/2017-TRU]
(Ruchi Bisht)
Under Secretary to Government of India

Seeks to amend notification No. 8/2017-IT(R) so as to specify rate @5% for standalone restaurants and @18% for other restaurants, reduce rate of job work on “handicraft goods” @ 5% and to substitute “Services provided” in item (vi) against Sl No. 3 in table.

Notification No. 48/2017-Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 5, subsection (1) of section 6 and clause (iii) and clause (iv) of section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) read with sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby makes

the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 8/2017-Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 683(E), dated the 28th June, 2017, namely:-

In the said notification, in the Table,-

(i) against serial number 3, in item (vi), in column (3), for the words "Services provided", the words "Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided" shall be substituted;

(ii) against serial number 7,-

(a) for item (i) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. *Explanation.*- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.	5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)].";

(b) for item (iii) in column (3) and the entries relating thereto in columns (3), (4) and (5), the following shall be substituted, namely:-

(3)	(4)	(5)
"(iii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for	18	-";

consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. Explanation.- "declared tariff" includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.		

(c) the item (iv) in column (3) and the entries relating thereto in columns (3), (4) and (5), shall be omitted;

(d) in item (ix), in column (3), for the entry, the following entry shall be substituted, namely:-

"(ix) Accommodation, food and beverage services other than (ii), (iii), (v), (vi), (vii) and (viii) above.

Explanation.- For the removal of doubt, it is hereby clarified that, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent shall attract integrated tax @ 5% without any input tax credit under item (i) above and shall not be levied at the rate as specified under this entry.";

(iii) against serial number 26, in column (3), in item (i), after sub-item (h), the following shall be inserted, namely: -

'(i) manufacture of handicraft goods.

Explanation. - The term "handicraft goods" shall have the same meaning as assigned to it in the notification No. 32/2017

-Central Tax, dated the 15th September, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1158 (E), dated the 15th September, 2017 as amended from time to time.'.

2. This notification shall come into force with effect from 15th of November, 2017.

[F. No.354/173/2017 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Amend Notification No. 9/2017-IT(R) so as to Extend Exemption to Admission to "Protected Monument" and to Consolidate Entry at Sl. No. 12A & 12B.

Notification No. 49/2017- Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 684 (E), dated the 28th June, 2017, namely:-

In the said notification, in the Table, -

(a) against serial number 12A, for the entry in column (3), the following entry shall be substituted namely: -

"Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.";

(b) the serial number 12B and the entries relating thereto, shall be omitted;

(c) after serial number 82 and the entries relating thereto, the following serial number and entries shall be inserted namely: -

(1)	(2)	(3)	(4)	(5)
"82A	Heading 9996	Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 (24 of 1958) or any of the State Acts, for the time being in force	Nil	Nil".

2. This notification shall come into force with effect from 15th of November, 2017.

[F. No.354/173/2017 -TRU]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Amend Notification No. 30/2017- Integrated Tax (Rate) Dated 22.09.2017, so as to Extend the Benefit of IGST Exemption, Applicable in Relation to Supply of Skimmed Milk Powder, or Concentrated Milk for Use in the Production of Milk Distributed Through Dairy Co-operatives to the Companies that are Registered under the Companies Act, 2013 also

Notification No. 50/2017-Integrated Tax (Rate)

New Delhi, the 14th November, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 6 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations of the Goods and Services Tax Council, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 30/2017-Integrated Tax (Rate), dated the 22nd September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1198 (E), dated the 22nd September, 2017, namely:-

In the said notification, in Table in column (4), for the brackets and words "[for distribution through dairy cooperatives]", the brackets, words and figures "[for distribution through dairy cooperatives or companies registered under the Companies Act, 2013 (18 of 2013)]", shall be substituted.

2. This notification shall come into force on the 15th day of November 2017.

[F.No.354/320/2017- TRU]
(Mohit Tewari)
Under Secretary to the Government of India

Twelfth amendment to CGST Rules, 2017

Notification No. 55/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R……(E):- In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

(1) These rules may be called the Central Goods and Services Tax (Twelfth Amendment) Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, -

(i) in rule 43, after sub-rule (2), the following explanation shall be inserted, namely:- "Explanation - For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017.";

(ii) in rule 54, in sub-rule (2), for the words "supplier shall issue", the words "supplier may issue" shall be substituted;

(iii) after rule 97, the following rule shall be inserted, namely:- "97A. Manual filing and processing. – Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."; (iv) after rule 107, the following rule shall be inserted, namely:- "107A. Manual filing and processing.

– Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules."; (v) after rule 109, the following rule shall be inserted, namely:-

"109A. Appointment of Appellate Authority- (1)Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to -

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person.

(2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –

(a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent, within six months from the date of communication of the said decision or order.";

(vi) in rule 124, -

(a) in sub-rule (4), for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.";

(b) in sub-rule (5), for the second proviso, the following proviso shall be substituted, namely: -

"Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.";

(vii) after the "FORM GST RFD-01", the following forms shall be inserted, namely:-

"FORM-GST-RFD-01 A

[See rules 89(1) and 97A]

Application for Refund (Manual)

(Applicable for casual taxable person or non-resident taxable person, tax deductor, tax collector and other registered taxable person)

1.	GSTIN / Temporary ID							
2.	Legal Name							
3.	Trade Name, if any							
4.	Address							
5.	Tax period (if applicable)	From <Year><Month> To <Year><Month>						
6.	Amount of Refund Claimed(Rs.)	Act	Tax	Interest	Penalty	Fees	Others	Total
		Central tax						
		State / UT tax						
		Integrated tax						
		Cess						
		Total						
7.	Grounds of Refund Claim (select from drop down)	(a)	Excess balance in Electronic Cash Ledger					
		(b)	Exports of services- with payment of tax					
		(c)	Exports of goods / services- without payment of tax (accumulated ITC)					
		(d)	ITC accumulated due to inverted tax structure[under clause (ii) of first proviso to section 54(3)]					
		(e)	On account of supplies made to SEZ unit/ SEZ developer(with payment of tax)					
		(f)	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)					
		(g)	Recipient of deemed export					

DECLARATION [second proviso to section 54(3)]

I hereby declare that the goods exported are not subject to any export duty. I also declare that I have not availed any drawback on goods or services or both and that I have not claimed refund of the integrated tax paid on supplies in respect of which refund is claimed.

Signature
Name –
Designation / Status

DECLARATION [section 54(3)(ii)]

I hereby declare that the refund of ITC claimed in the application does not include ITC availed on goods or services used for making 'nil' rated or fully exempt supplies.

Signature
Name –
Designation / Status

DECLARATION [rule 89(2)(f)]

I hereby declare that the Special Economic Zone unit /the Special Economic Zone developer has not availed of the input tax credit of the tax paid by the applicant, covered under this refund claim.

Signature
Name –
Designation / Status

SELF- DECLARATION [rule 89(2)(l)]

I/We _____ (Applicant) having GSTIN/ temporary Id -------, solemnly affirm and certify that in respect of the refund amounting to Rs. ---/ with respect to the tax, interest, or any other amount for the period from----to----, claimed in the refund application, the incidence of such tax and interest has not been passed on to any other person.

Signature
Name –
Designation / Status

(This Declaration is not required to be furnished by applicants, who are claiming refund under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54.)

8. Verification

I/We<*Taxpayer Name*> hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

I/We declare that no refund on this account has been received by me/us earlier.

Place
Date

Signature of Authorised Signatory
(Name)
Designation/ Status

Annexure-1

Statement -1 [rule 89(5)]

Refund Type: ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]

(Amount in Rs.)

Turnover of inverted rated supply of goods	Tax payable on such inverted rated supply of goods	Adjusted total turnover	Net input tax credit	Maximum refund amount to be claimed [(1×4÷3)-2]
1	2	3	4	5

Statement- 3A [rule 89(4)]

Refund Type: Export without payment of tax (accumulated ITC) – calculation of refund amount

(Amount in Rs.)

Turnover of zero rated supply of goods and services	Net input tax credit	Adjusted total turnover	Refund amount (1×2÷3)
1	2	3	4

Statement-5A [rule 89(4)]

Refund Type: On account of supplies made to SEZ unit / SEZ developer without payment of tax (accumulated ITC) – calculation of refund amount

(Amount in Rs.)

Turnover of zero rated supply of goods and services	Net input tax credit	Adjusted total turnover	Refund amount (1×2÷3)
1	2	3	4

FORM-GST-RFD-01 B

[See rules 91(2), 92(1), 92(3), 92(4), 92(5) and 97A]

Refund Order details

1.	ARN	
2.	GSTIN / Temporary ID	
3.	Legal Name	
4.	Filing Date	
5.	Reason of Refund	
6.	Financial Year	
7.	Month	
8.	Order No.:	
9.	Order issuance Date:	
10.	Payment Advice No.:	
11.	Payment Advice Date:	
12.	Refund Issued To :	Drop down: Taxpayer / Consumer Welfare Fund
13.	Issued by:	
14.	Remarks:	
15.	Type of Order	Drop Down: RFD- 04/ 06/ 07 (Part A)
16.	Details of Refund Amount (As per the manually issued Order):	

	Tax	Interest	Penalty	Fees	Others	Total	Tax	Interest	Penalty	Fees	Others	Total	Tax	Interest	Penalty	Fees	Others	Total	Tax	Interest	Penalty	Fees	Others	Total
a. Refund amount claimed																								
b. Refund Sanctioned on provisional basis																								
c. Remaining Amount																								
d. Refund amount in-admissible																								

e. Gross amount to be paid																							
f. Interest (if any)																							
g. Amount adjusted against outstanding demand under the existing law or under the Act																							
h. Net amount to be paid																							
17.	Attachments (Orders)							RFD-04; RFD- 06; RFD 07 (Part A)															
Date: Place:								Signature (DSC): Name: Designation: Office Address: "															

[F. No. 349/58/2017-GST(Pt)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Mmandate the Furnishing of Return in FORM GSTR-3B till March, 2018

Notification No. 56/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R……(E):- In exercise of the powers conferred by section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with sub-rule (5) of rule 61 of the Central Goods and Services Tax Rules, 2017, the Commissioner, on the recommendations of the Council, hereby specifies that the return in FORM GSTR-3B for the month as specified in column (2) of the Table shall be furnished electronically through the common portal, on or before the last date as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl No.	Month	Last date for filing of return in FORM GSTR-3B
(1)	(2)	(3)
1.	January, 2018	20th February, 2018
2.	February, 2018	20th March, 2018
3.	March, 2018	20th April, 2018

2. Payment of taxes for discharge of tax liability as per FORM GSTR-3B: Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as mentioned in column (3) of the said Table, on which he is required to furnish the said return.

[F. No.349 /58/2017-GST(Pt)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to prescribe quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crore

Notification No. 57/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, notifies the registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year, as the class of registered persons who shall follow the special procedure as detailed below for furnishing the details of outward supply of goods or services or both.

2. The said persons shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 effected during the quarter as

specified in column (2) of the Table below till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl No.	Quarter for which the details in FORM GSTR-1 are furnished	Time period for furnishing the details in FORM GSTR-1
(1)	(2)	(3)
1.	July - September, 2017	31st December, 2017
2.	October - December, 2017	15th February, 2018
3.	January - March, 2018	30th April, 2018

3. The special procedure or extension of the time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the Act, for the months of July, 2017 to March, 2018 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST(Pt.)]
(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Extend the Due Dates for the Furnishing of FORM GSTR-1 for those Taxpayers with Aggregate Turnover of more than Rs.1.5 crores

Notification No. 58/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):— In exercise of the powers conferred by the second proviso to sub-section (1) of section 37 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the Act) and in supersession of notification No. 30/2017 – Central Tax dated the 11th September, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1144 (E), dated the 11th September, 2017, except as respects things done or omitted to be done before such supersession, the Commissioner, on the recommendations of the Council, hereby extends the time limit for furnishing the details of outward supplies in FORM GSTR-1 under sub-

section (1) of section 37 of the Act for the months as specified in column (2) of the Table, by such class of registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year, till the time period as specified in the corresponding entry in column (3) of the said Table, namely:-

Table

Sl No.	**Months for which the details in FORM GSTR-1 are furnished**	**Time period for furnishing the details in FORM GSTR-1**
(1)	(2)	(3)
1.	July - October, 2017	31st December, 2017
2.	November, 2017	10th January, 2018
3.	December, 2017	10th February, 2018
4.	January, 2018	10th March, 2018
5.	February, 2018	10th April, 2018
6.	March, 2018	10th May, 2018

2. The extension of the time limit for furnishing the details or return, as the case may be, under sub-section (2) of section 38 and sub-section (1) of section 39 of the Act, for the months of July, 2017 to March, 2018 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST(Pt.)]
(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Extend the Time Limit for Filing of FORM GSTR-4

Notification No. 59/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):- In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 41/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1255(E), dated the 13th October, 2017, namely:-

In the said notification, for the words, figures and letters “the 15th day of November, 2017”, the words, figures and letters “the 24thday of December, 2017” shall be substituted.

[F. No. 349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Extend the Time Limit for Furnishing the Return in FORM GSTR-5, for the Months of July to October, 2017

Notification No. 60/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):- —In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Commissioner hereby extends the time limit for furnishing the return by a non-resident taxable person, in FORM GSTR-5, under sub-section (5) of section 39 of the said Act read with rule 63 of the Central Goods and Services Tax Rules, 2017 for the months of July, 2017, August, 2017, September, 2017 and October, 2017 till the 11th day of December, 2017.

[F. No. 349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Extend the Time Limit for Furnishing the Return in FORM GSTR-5A for the Months of July to October, 2017

Notification No. 61/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):— In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and in supersession of notification No. 42/2017-Central Tax, dated the 13th October, 2017, published in

the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1256 (E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supersession, the Commissioner, hereby extends the time limit for furnishing the return in FORM GSTR-5A for the month of July, 2017, August, 2017, September, 2017 and October, 2017 by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 and rule 64 of the Central Goods and Services Tax Rules, 2017, till the 15th day of December, 2017.

[F. No. 349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Extend the Time Limit for Furnishing the Return in FORM GSTR-6 for the month of July, 2017

Notification No. 62/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):— In exercise of the powers conferred by sub-section (6) of section 39 read with section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act) and in supersession of notification No. 43/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1257 (E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supersession, the Commissioner hereby extends the time limit for furnishing the return by an Input Service Distributor in FORM GSTR-6 under sub-section (4) of section 39 of the said Act read with rule 65 of the Central Goods and Services Tax Rules, 2017 for the month of July, 2017 till the 31st day of December, 2017.

2. The extension of the time limit for furnishing the return under sub-section (4) of section 39 of the said Act for the month of August, 2017, September, 2017 and October, 2017 shall be subsequently notified in the Official Gazette.

[F. No. 349/58/2017-GST(Pt.)]
(Ruchi Bisht)
Under Secretary to the Government of India

Seeks to Extend the Due date for Submission of Details in FORM GST-ITC-04

Notification No. 63/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):- In pursuance of section 168 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and sub-rule (3) of rule 45 of the Central Goods and Services Tax Rules, 2017, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 53/2017-Central Tax, dated the 28th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 1346 (E), dated the 28th October, 2017, namely:-

In the said notification, for the words, figures and letters "the 30th day of November, 2017", the words, figures and letters "the 31st day of December, 2017" shall be substituted.

[F. No. 349/58/2017-GST(Pt)]
(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Limit the Maximum Late Fee Payable for Delayed Filing of Return in FORM GSTR-3B from October, 2017 onwards

Notification No. 64/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R……(E):- In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-3B for the month of October, 2017 onwards by the due date under section 47 of the said Act, which is in excess of an amount of twenty five rupees for every day during which such failure continues:

Provided that where the total amount of central tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return for the month of October, 2017 onwards by the due date under section 47 of the said Act shall stand waived to the

extent which is in excess of an amount of ten rupees for every day during which such failure continues.

[F. No. 349/58/2017-GST(Pt)]
(Dr. Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Exempt Suppliers of Services through an E-Commerce Platform from Obtaining Compulsory Registration

Notification No. 65/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. …..(E).— In exercise of the powers conferred by sub-section (2) of section 23 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of services, other than supplies specified under sub-section (5) of section 9 of the said Act through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year, as the category of persons exempted from obtaining registration under the said Act:

Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ten lakh rupees in case of "special category States" as specified in sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir.

[F. No.349/58/2017-GST(Pt)]
(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Seeks to Exempt All Taxpayers from Payment of Tax on Advances Received in Case of Supply of Goods

Notification No. 66/2017 – Central Tax

New Delhi, the 15th November, 2017

G.S.R. (E):— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act) and in supercession of notification

No. 40/2017-Central Tax, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.1254(E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supercession, the Central Government, on the recommendations of the Council, hereby notifies the registered person who did not opt for the composition levy under section 10 of the said Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

[F. No. 349/58/2017-GST(Pt)]
(Dr.Sreeparvathy S.L.)
Under Secretary to the Government of India

Circular No. 5 of 2014-15

No.F.3(444)/Policy/VAT/2014/231-237 Dated: 04/08/2014

Circular No. 5 of 2014-15

The reconciliation return in CST Form 9 relating to receipt of declarations/certificates for a year has been notified vide Notification No.F.3(27)/Fin(Rev-I)/2013-14/dsVI/292 dated 05/03/2014. Therefore, all eligible dealers are required to furnish relevant information for the year 2013-14 latest by 30/09/2014. In the Form 9, dealer can also furnish the details of pendency of forms for preceding three years, viz. 2010-11, 2011-12, 2012-13, if no assessment has been framed for the relevant year.

2. Accordingly, no Assessing Authorities shall frame any central assessment related to Central declaration forms and where no refund is involved, as the same shall be generated by the Systems & Operation Branch on the basis of the information furnished by the dealer in Form 9.

3. However, Assessing Authorities are allowed to frame the central assessment order of the dealer, only in such cases where it is required for processing the refund claims.

4. All Zonal Authorities may ensure strict compliance of the circular.

5. This issues with the prior approval of Commissioner, VAT conveyed vide Dy.No. 903 dated 31/07/2014.

(Sanjeev Ahuja)
Spl. Commissioner (Policy)

Circular No. 42 of 2015-16

No.F.3(651)/Policy/VAT/2016/1734-38 Dated: 19-3-16

Circular No. 42 of 2015-16

SUBJECT: Assessment of Enforcement Survey/Seizure Cases by respective ward officers.

In a recent judgement in the matter of M/s Capri Bathaid Private Ltd. & others Vs Commissioner (Trade and Taxes), dated 02.03.2016, Hon'ble

Delhi High Court has observed that multiplicity of authorities should be avoided.

To comply with the aforesaid judgement of Hon'ble court, it has now been decided to assign the assessment of all cases pursuant to Enforcement surveys to officers of wards concerned except the cases for which proceedings/jurisdiction has been transferred by the Commissioner, Value Added Tax through a separate order under section 67 of Delhi Value Added Tax Act, 2004.

Therefore, all officers with whom such cases are lying pending as on date, are hereby directed to transfer the aforesaid cases to the concerned ward officers immediately and after transfer ward authorities shall ensure that assessments are completed within the time frame specified under the said Act.

Any deviation to the order shall be viewed seriously and may attract disciplinary action.

This issues with the approval of Commissioner, VAT.

R.K. Mishra
Spl. Commissioner (Policy)

Trade Circular

No. VAT/34/Central Rep./B- Mumbai, dt. 06.12.2007

Trade Circular No.- 70 T of 2007

Gentlemen/Sir/Madam,

Sub: Issue and receipt of declarations in Form C / F / H.

Representations have been received by this office pointing out the difficulties faced by the applicants for the declarations under CST Act in Form C /Form F/Form H etc. In certain situations there is a time lag between the raising of the sale invoice/ consignment note by the vendor situated outside the State and the receipt of the goods by the purchaser in Maharashtra. Normally, the dealers enter the purchase invoices in their registers as per the invoice date, but some dealers may enter such invoice in their purchase register on the basis of the date of the receipt of the goods or the date of inspection of goods etc. In this situation, for a given

transaction the date on the sales invoice and the date of purchase recorded in the purchase register are different.

2. The Sales Tax Officers in the Central Repository may raise objections due to this mis- match of dates and refuse to issue the declarations for the period of purchase as recorded by the purchaser or the officers in other branches may also take an objection that the sale/consignment transfer against the declaration cannot be allowed due to the difference in dates. Alternatively, the officers may ask the dealer to rectify the declarations.

3. The 2nd proviso to rule 12(1) in the Central Sales Tax Rules (Registration & Turnover) rules, 1957 reads as follows:

> "Provided further that a single declaration may cover all transactions of sale, which take place in a quarter of a financial year between the same two dealers".

The 3rd Proviso to the same sub-rule reads as follows:

> "Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter of a financial year".

The first proviso to Rule 12 (5), which relates to Form F reads as follows:

> "Provided that a single declaration may cover transfer of goods by a dealer, to any other place of his business or to his agent or principal, as the case may be, effected during a period of one calendar month."

4. The interpretation of these provisos leads to following conclusions:

a) A single declaration in form 'C' etc. may be issued in case of all transactions of sale in a given quarter between two dealers.

b) A single declaration in Form F may be issued in case of all transfers effected in a calendar month.

c) As far as the issuance declarations in form 'C' / 'F' etc. for interstate transactions is concerned, the essence is the delivery

of goods and not the date of sale or date of transfer printed on the sale invoice/ consignment note.

5. In view of the above, following instructions are issued as regards the declaration in form 'C'/Form 'F' /Form H etc.

A. The officers in the Central Repository will not refuse the declarations only because for a given transaction the date of purchase/transfer as recorded by the purchaser falls in the next quarter/month than the date of sale printed on the sale invoice.

B. The officers in other branches will also not object the sale/ consignment transfer against the declarations in form 'C' / form 'F'/Form 'H' , if there is a difference in recording the date of transactions by the purchaser and the date recorded by the purchaser falls in a next quarter/month. This clarification will therefore becomes applicable in case of receipt of declarations in form C, H & F from buyers/branch/agent from other states.

C. It is needless to add that in any case, the above referred Provisos do not, in any case, determine the date on which the sale/transfer is said to have taken place since the provisos speak only about the admissibility and production of the declarations and the provisos do not determine the event of sale in any way.

This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt he may refer the matter to this office for further clarification.

You are requested to bring the contents of this circular to the notice of all the members of your association.

(Sanjay Bhatia)
Commissioner of Sales Tax,

Maharashtra State, Mumbai.