FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

COMMITTEE
ON
PUBLIC ACCOUNTS
(2016-2019)

THIRTY FOURTH REPORT

(Presented on- 5th December, 2018)

SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2018

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COMMITTEE
ON
PUBLIC ACCOUNTS
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On

Action Taken by Government on the Recommendations contained in the 134th Report of the Committee on Public Accounts (2008-2011)

168/2019.

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INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the Thirty Fourth Report on Action Taken by Government on the Recommendations contained in the 134th Report of the Committee on Public Accounts (2008-2011)

The Committee considered and finalised this Report at the meeting held on 3-12-2018.

Thiruvananthapuram,
3rd December, 2018.

V. D. SATHEESAN,
Chairman,
Committee on Public Accounts.

REPORT

This Report deals with the Action Taken by the Government on the recommendations contained in the 134th Report of the Committee on Public Accounts (2008-2011).

The 134th Report of the Committee on Public Accounts (2008-2011) was presented to the House on 28th December, 2010. The Report contained 10 recommendations related to Taxes Department. Government was addressed on 30th December 2010 to furnish the statements of Action Taken on the recommendations contained in the Report and the final reply was received on 28th February 2017.

The Committee considered Action Taken Statements at its meetings held on 27-8-2013, 26-11-2014, 30-11-2016, 20-9-2017 and approved the same in the light of the replies furnished by Government. The recommendations of the Committee and replies furnished by Government are included in this Report.

TAXES DEPARTMENT

Recommendation

(SI No.1, Para No. 49)

The Committee finds that the Department incorrectly exempted inter-state turnover of Centrifugal Latex while finalizing Central Sales Tax from the period 97-98 to May 2001 resulting in short levy of tax to the tune of ₹ 2.32 crore across various circles of Commercial Taxes Department in the State. The Committee deplores this wilful act of the Department when there existed a High Court verdict which clearly indicated that Latex and Centrifugal Latex were separate entities and the latter could not be exempted from CST on inter-state sale by manufactures. Even though the department tried to defend their stand with many arguments with supporting SROs, cases, circulars, the Committee stands firm on the fact that inter-state sale is taxable irrespective of whether it happened before or after High Court verdict. The Committee is also dissatisfied with the vague replies given during examination of audit paragraph with hardly any documents supporting their views or any legal backing for exempting inter-state sale of Centrifugal Latex. Even though the Deputy Commisssioner (A&I) agreed to furnish before the Committee, the explanation and documents suggesting that tax should not be collected for inter-state dealings it was not complied with till date, which the Committee finds appalling and treats as disrespect towards them. The Committee also opines that Revenue Recovery procedures in many 17 cases was not done properly and amount not collected. The Committee understands that during assessment period of the case with M/s R. K. Latex, Thrissur tax ought to have been levied which the Department failed to do and views this act as highly improper.

Action Taken

These audits are based on the verdict of the Kerala High Court in M/s Supersonic Industrial Complex, Muvattupuzha Vs. Deputy Commissioner, Sales Tax (Law), Ernakulam in (2002) 10 KTR 203 (Ker) wherein it has been held that field latex and centrifuged latex were separate entities. This decision has been superseded by the High Court of Kerala in Kurian Abraham Vs. State of Kerala (2004) 12 KTR 235 and that was subsequently confirmed by the Honourable Supreme Court of

India in State of Kerala and others Vs. M/s Kurian Abraham Pvt. Ltd. and another reported in (2008) 16 KTR 184 (SC). As per the above decision, the Circular No. 16/98 issued by the Board of Revenue holding that "field latex and centrifuged latex" are one and the same commodity for taxation is binding on all the authorities under Board of Revenue. The implication of the circular is that if tax is paid on field latex under KGST Act 1963, no tax will be payable on centrifuged latex sold interstate. Since the position of law is as such and the assessments were made on the basis of the circular 16/98, the audit is not sustainable. However details of individual cases pointed out are furnished herewith.

(1) M/s Season Rubbers (P) Ltd. (98-99), Spl. Cle. Kottayam.

During the Audit Scrutiny of the assessment records for the year 98-99, it was pointed that the CST assessment for the year 98-99 was finalized by fixing total and taxable turnover of ₹ 3,64,96,224 and 8 lakhs respectively. While finalizing CST assessment for 98-99 the sales value of centrifuged latex amounting to Rs.3,56,96,224 was given exemption under SRO 215/97. As centrifuged latex and field latex are two different commodities, tax is leviable on the interstate sale of centrifuged latex. Short levy of CST worked to ₹ 35,69,622.

In reply to this it is submitted that the High Court of Kerala as per OP No.12376 dated 8-12-2003 directed to follow Circular No. 16/98 ie. there is no tax for the interstate sale if the purchase of raw rubber used for the conversion of centrifuged latex is assessed under KGST Act. In this case centrifuged latex assessed under KGST. The objection raised is not sustainable.

(2) Gaico Limited -1999-2000 Spl.Cle., Kottayam

In audit it is pointed out that assessment for the year 1999-2000 was finalized by giving exemption of interstate sale of 7,62,796.8 kg. of centrifuged latex amounting to ₹ 3,09,87,636.00 and was recorded as a case of nil demand. Since no tax had been suffered on the purchase of centrifuged latex CST was leviable on the above interstate sale. The short levy of CST on ₹ 3,09,87,636 @ 4% amounts to ₹ 12,39,505.

In reply to this is submitted that the High Court of Kerala as per OP No.12376 dated 8-12-2003 directed to follow Circular No. 16/98 ie. there is no

tax for the interstate sale if the purchase of raw rubber used for the conversion of centrifuged latex is assessed under KGST Act. In this case centrifuged latex assessed under KGST. The objection raised is not sustained.

(3) Thomson Rubbers 97-98 Spl. Cle., Kottayam

In finalizing CST assessment for the year 97-98 a turnover of ₹ 1,09,43,526 was given exemption being interstate sale of centrifuged latex on the strength of SRO 215/97 and recorded as case of nil demand. As per SRO 215/97 turnover on interstate sale of rubber is exempted from levy of CST on condition that the tax has been levied under KGST Act, 1963 as its production. The Accountant General pointed out that as the assessee has not paid KGST on centrifuged latex in the state the assessee was not eligible for exemption from levy of tax under CST Act, 1956.

Based on the audit observations the assessment records for the year 97-98 has been verified and understood that the assessee has been levied tax under KGST Act on purchase of rubber and hence there is no loss of revenue arises in this case.

(4) Malankara Rubber Produce Co.-97-98 Spl. Kottayam

In audit it is pointed out that while completing CST assessment for the year 97-98 in respect of the Malankara Rubber Produce Co. Ltd., no tax was levied on a turnover of ₹ 30,49,083 towards interstate sale of centrifuged latex (Cenex), manufactured out field latex purchased in the state SRO 215/97 allow exemption on the CST payable on Rubber if tax has been suffered on its purchase in the state. Since centrifuged latex is the finished goods manufactured out of raw rubber and the same has not suffered under KGST the exemption given on interstate sale centrifuged latex was not in order.

Based on this audit objections, the assessment records in respect of the assessee for the year 97-98 has been verified and understood that the purchase turnover of raw rubber has been levied tax in the KGST assessment. As Centrifuged latex and raw rubber are one and same commodity enlisted under 110 of 1st schedule as it then stood it should be treated as one as per circular No 16/98 of Board of Revenue Taxes there is no question of law arises in the KGST assessment for the year 97-98 in respect of the Malankara Rubbers & Produce Co.Ltd.

(5) Kurian Abraham Ltd. 97-98 Spl. Cle. Kottayam

Based on the audit objection the assessment was reopened on 24-3-2003 and the assessee filed OP No. 12376/03 against the re-opened assessment. The Hon'ble High Court of Kerala as per OP. No. 12376/03 dated 8-12-2003 allowed the petition in favour of the dealer directing the assessing authority to follow the circular 16/98 ie. there is no tax for the interstate sale of the purchase of raw rubber used for the conversion of centrifuged latex is assessed under KGST.

(6) S. Pradeep Kumar, Idukki Rubber (P) Ltd. (98-99 & 99-00) AIT & CTO, Peerumade

S. Pradeep Kumar, Idukki Rubber (P) Ltd. (98-99, 99-00)-AIT & ST, Peerumade. While finalising the Central Sales Tax assessment of a dealer Shri S. Pradeep Kumar, Idukki Rubbers (P) Ltd. for the years 1998-99 and 99-2000, turnover of inter-state sale of centrifugal latex aggregating ₹ 210.86 Lakh was exempted from levy of tax, on the contention that tax was levied under the KGST Act on the field latex used in the production of centrifugal latex. As latex and centrifugal latex were commercially different, the exemption allowed was irregular. This resulted in non-levy of Central Sales Tax of ₹ 21.52 Lakh. The assessee is a small scale industrial unit had remitted purchase tax on the purchase value of field latex and claimed exemption for the local sale of centrifugal latex and skimmed rubber on the strength of Form 25 declaration from the purchaser with in the state and claiming exemption for the interstate sale of centrifugal latex on the strength of SRO-215/97. It is seen that as per entry 25 of the 3rd scheduled to SRO-1727/93 small scale industrial unit which are registered with the department of industries and commerce, turnover of purchase of rubber used in the manufacture of rubber goods with in the state are exempted from purchase tax. Local sale of Centrifugal latex are covered with form 25 declaration hence it is exempted from tax. In the case of interstate sale small scale industrial units are eligible for reduced rate of tax at 4% even in the absence of C' Forms as per SRO 1731/93 clarification in para 7 of circular No. 16/98 says that no new commodity emerges in the convertion of field latex into centrifuged latex such as industrial unit will not be eligible for exemption under SRO-1003/91 and SRO No. 1727/93 in respect of the purchase of field latex for conversion in to centrifuged latex. SRO 695/2003 dated 25-7-2003

exempt manufacture of centrifuged latex and crumb rubber from the payment of tax payable under the KGST Act 1963 on the purchase turnover of rubber in any form used for the manufacture of centrifuged latex and crumb rubber. The notification have been in force during the period from 1-4-1988 to 9-10-2001. Hence there is no loss of revenue involved in this case. The issue has settled in Kurian Abraham (P) Ltd. case (12 KTR 235) that by centrifuging, the commodity does not change.

(7) R.K. Latex (P) Ltd. (97-98) Spl. Cle. Thrissur

The assessee was a dealer engaged in the business of purchasing rubber latex and converting the same as centrifuged latex and effecting local as well as interstate sale. Assessment of the dealer for the year 97-98 was originally completed under KGST Act as per order dated 3-5-2001 assessing the purchase turnover of latex.

The CST assessment for the year was completed giving exemption to interstate sales turnover of ₹ 63,38,450 as tax has already been levied under KGST Act, as per SRO 1731/93 read with SRO 215/97. The Audit objected to the assessment stating that the interstate sales turnover was not considered for assessment, based on the decision of the Honorable High Court of Kerala in the case reported in 121 STC 274. According to the Audit, as per the above decision, centrifuged latex is a finished product. So, it is assessable to tax even if the purchase turnover of field latex was assessed.

The assessments were completed based on the Circular No. 16/98 dated 28-5-1998 issued by the Board of Revenue as per which field latex and centrifuged latex were treated as one and the same commodity as per Entry No. 110 of I Schedule to KGST Act, 1963. Hence, as purchase turnover of field latex was assessed to tax under KGST Act, interstate sales turnover was eligible for exemption as per SRO No. 1731/93 read with SRO 215/97. As per the above Circular, which was binding on the assessing officers, the assessments completed were in order and the objection raised in Audit was not sustainable.

The decision relied on by the Audit has been subsequently overruled by the Full Bench decision of the Honourable High Court of Kerala in Kurian Abraham

v/s State of Kerala (2004) (12KTR 235) wherein it was held that there was no manufacturing process involved in the conversion of field latex into centrifuged latex and that both are one and the same commodity. The above decision was later confirmed by the Apex Court in the case "State of Kerala & Others v/s M/s Kurian Abraham Pvt. Ltd. & Another (2009) 53 STA 241. The Honorable Apex Court, while upholding the judgment of the Honorable High Court of Kerala held that the returns of the assessee having been accepted on the basis of the Circular No. 16/98 issued by the Board of Revenue under Section 3 (1A) (C), can't be re-opened by the departmental officers working under the Board of Revenue on the footing that the Circular was not binding on them. The Honorable Apex Court has held that the said Circular is Statutory in nature and, therefore, is binding on the departmental officers. It is not open to the officers administering the law working under the Board of Revenue to say that the said Circular is not binding on them. If such a contention was to be accepted, it would lead to chaos and indiscipline in the administration of tax laws. It was also pointed out by the Honorable Supreme Court that the Government has rescinded the notification No. SRO 316/2005 by SRO 946/2007 dated 13-11-2007 which indicates that there was a possibility of double taxation on centrifuged latex produced from field latex and, therefore, the Government had to step in and grant exemption.

In view of the Circular No. 16/98 and the decisions of the Honorable High Court of Kerala and the Apex Court, there is no irregularity in the CST assessment completed for the year 97-98 and the objection in audit is not sustainable.

8 M/s Kalpetta Estate (97-98) Spl.Cle., Alappuzha

The dealer purchased Ammoniated Latex from registered dealers within the state and converted it into centrifuged latex and sold the same to registered dealers within the state on the strength of form No. 25 declarations. The Assessment relates to the year 1997-98. The assessment completed under section 19 on 26-2-2003 assessing the purchase value of latex was reduced as per appellate order No. STA 26/2003 dated 19-4-2003 of the Deputy Comissioner (Appeals) Kollam based on SRO No. 695/03.

As per the said notification the purchase turnover of rubber has been exempted from 1-4-1988 to 9-10-2001. The assessment relates to the year 1997-98. Under these circumstances, there is no loss of revenue involved in this case.

(9) Gaico Ltd. (99-00 KGST) Spl. Cle., Kottayam

As per SRO 695/2003 dated 25-7-2003 manufacture of centrifuged latex and crumb rubber are exempted from the payment of tax payable under KGST Act 1963, on the purchase turnover of rubber in any form used for the manufacture of centrifuged latex and crumb rubber. This notification shall be deemed to have been in force during the period from 1-4-1988 to 9-10-2001. Therefore there is no loss of revenue to the State.

(10) M/s Season Rubbers (P) Ltd. (98-99 KGST) Spl. Cle., Kottayam

While finalizing the KGST assessment for 98-99 an amount of ₹ 85,30,005 being the purchase turnover of rubber including the element of cess was given exemption as per the instruction issued by the Board of Revenue in Circular No. 16/98. Since the field latex and centrifuged latex are one and the same commodity there is no escape of turnover as pointed out in audit.

(11) M/s Cum Polymers (P) Ltd. (98-99) Spl. Cle., Pkd.

M/s CUM Polymers Ltd. was an SSI Unit eligible for sales tax exemption for a tune of ₹ 74,55,661 as per Order No. T-1341/2002 dated 18-10-2002 of District Industries Centre, Palakkad, for the period from 15-4-1998 to 14-4-2005. As per original order, the turnover under CST has been given exemption for ₹ 20,40,750. The purchase turnover of centrifugal latex was ₹ 63,34,106 which was given exemption for the year 1998-99.

As the dealer has not availed an ST exemption as per original order, the dealer is eligible for a balance ST exemption of ₹ 71,91,747 remaining unadjusted as per Order No. 31016019/2099-2000 (Revised) dated 15-9-2003. No. loss of revenue involved as pointed out in Audit.

(12) Modi Rubber (96-97) Spl.Cle., Mattancherry

Short levy due to escape of turnover in respect of M/s Modi Rubber Ltd. Amount to ₹ 7,21,272. The assessment was rectified demanding the tax on escaped turnover and the demand was under RR. This is a BIFR case and the assessee opted amnesty scheme for the years 1996-1997 to 2001-02. The total amnesty amount of ₹ 1,31,34,855 was remitted vide two cheques which was cleared vide chalan No. 263/11-1-11 for ₹ 1,18,42,310 and chalan No. 519/14/1/11 for ₹ 12,92,345. Hence there are no arrears due from the assessee for the Year 96-97.

(13 & 14) M/s Enjayes Spices and Chemicals Oil Ltd. Pathanamthitta (96-97, 97-98 & 98-99)

1996-97

The original assessment was completed on 20-8-1999 and was cancelled by Deputy Commissioner, Pathanamthitta under section 35 on 5-4-2003 for fresh disposal in view of the audit objection. The assessee filed appeal before sales Tax Appellate Tribunal. The Tribunal as per TA 233/03 dated 1-11-2004 set aside the above order of the Deputy Commissioner, Pathanamthitta and restored the original assessment order dated 20-8-1999 exempting levy of tax. As per the restoration of the original assessment order, the dealer remitted ₹ 55,281 towards tax and ₹ 5,528 towards surcharge as per Ch No. 669/15-1-2010 and no dues outstanding.

1997-98

Final Assessment was completed on 12-11-1999 and revised under section 19 in view of the audit objection on 18-1-2003. The dealer filed appeal before Deputy Commissioner (A), Kollam and as per order STA No. 374375/03 dated 30-9-2003 allowed the claim of the dealer that they are eligible for exemption from levy of tax on purchase produced under schedule VI of SRO 1727/93. As per the direction contained in TA order STA 374, 375/03 dated 30-9-2003 the Deputy Commissioner has modified the assessment and the balance tax ₹ 69,985 and Surcharge ₹ 6,995 due adjusted against the remittance by the dealer through Revenue Recovery.

1998-99

Final assessment was revised under section 19 in view of audit objection on 18-1-2003. Deputy Commissioner (A), Kollam has reduced the assessment as per order No. 374, 375/2003 dated 30-9-2003, the appeal for 1998-99 was disposed by a common order for Deputy Commissioner (A), Kollam. The Deputy Commissioner (General) had addressed to the Advocate General vide letter No. J1-22313/06, that this is a fit case to challenge in TRC before Honourable High Court of Kerala. The Joint Commissioner (Law), Eranakulam had informed the Deputy Commissioner (Legal Wing), Thiruvananthapuram vide letter No.D-167/05 dated 30-8-2006 that there is no scope for filing TRC in this case on the basis of the observation of Special Government Pleader (Taxes). The view of the Special Government Pleader (Taxes) is seen endorsed by the Addl. Advocate General also.

(15) M/s Universal Gloves (P) Ltd. (95-96 & 97-98) 2nd Cle. Kalamassery

On the basis of Audit, the assessment for the years 95-96 and 97-98 have set aside by the Deputy Commissioner with direction to the assessing authority to reconsider the claim of exemption and complete the assessment afresh according to law. The Kerala STAT in TA Nos 839/97, 840/97, 292/97, 293/97, 819/98, 818/98 in the case of M/s Dantex Rubber (P) Ltd. and M/s AVT Rubber Products Ltd. has held that exemption as per the said SRO is applicable for goods taxable at last purchase point also. The Tribunal also held that exemption is not intended for sellers or class of sellers of industrial inputs but the benefit is conferred on units in Cochin Export Processing Zone. The assessee belongs to that category.

(16) M/s Janco Polymers (P) Ltd. (96-97)

The assessee M/s Janco Polymers (P) Ltd. went in appeal against the order dated 13-3-2001 and Appellate Asst. Commissioner modified the assessment as per order No.STA.802/01 dated 30-11-2001 with direction among other to allow exemption on the purchase turnover of latex which acquired the status of last purchase at the hands of the assessee. Relying on the Tribunal order and legal opinion of Advocate General, no second appeal has been filed in this case.

(17) M/s Universal Gloves (P) Ltd. (96-97)

The assessee filed Sales tax revision before the Hon'ble High Court of Kerala as per ST Rev.no.21 of 2007 and in judgment dated.30-8-2010 the Hon'ble High Court of Kerala upheld the notification.

Recommendation

(Sl.No.2, Para No.50)

The Committee opines that most of the RMT Statements given by the Department is not in unison with the observation made by the Accountant General. Moreover there exists contradiction between what is written in the Statements and what is deposed during deliberation which the Committee feels appalling. The Committee also exhorts the Department to refrain from giving RMT Statements at a stretch combining all paragraphs, instead should give separate replies of individual cases after collating and sorting all Government replies.

Action Taken

The recommendation of the Committee is noted for future guidance and compliance.

Recommendation

(Sl. No.3, Para No.51)

The Committee understands that the department incorrectly exempted tax on 100% Export Oriented Units (EOU) on their purchases on the purchase point taxable goods, when a related notification clearly said that exemption is applicable only to the seller in EOUs and not for the purchaser. The Committee is all the more unhappy over the fact that all these cases occurred before the year 2003 where the said notification was never in picture. The Committee also expresses displeasure over the non procurement of certificate suggesting that the seller shall seek exemption for a period of 5 years from the date of approval of such units by Central Government. The Committee deplores the act of Department which failed to collect relevant documents from the units for getting exemption and blames them for not verifying the most important aspect that whether the unit produced the Seller Certificate or not. The Committee expresses serious concern over the fact

that the assessments which was revised by the Department as well as the recommendations of the Accountant General were set aside by the Deputy Commissioner.

Action Taken

M/s Enjayes Spices & Chemicals Oils Ltd., Pathanamthita

1996-97

The original assessment was completed on 20-8-1999 and this was cancelled on 5-4-2003 by the Deputy Commissioner, Pathanamthitta under Section 35 for fresh disposal in view of audit objection. Against the revised order, the assessee filed appeal before the Hon'ble Sales Tax Appellate Tribunal. The Tribunal as per order No.233/03 dated 1-11-2004, set aside the above order of Deputy Commissioner, Pathanamthitta and restored the original assessment order dated 20-8-99 exempting levy of tax. The tribunal held the view that since the dealer is 100% Export Oriented Unit, the purchase of Industrial raw materials are also exempted from tax.

As directed by the Committee on Public Accounts, a copy of Seller Certificate dtd. 24-8-1995 is produced herewith which was issued to M/s Enjayes Spices and Chemicals Oils Ltd., Pathanamthita by the Development Commissioner, Cochin Export Processing Zone (CEPZ) which shows M/s Enjayes Spices & Chemicals is a 100% EOU Unit. This certificate is valid up to 31-8-2000.

1997-98

The assessment completed on 12-11-1999 was revised under Section 19 in view of the audit observation on 18-1-2003. Deputy Commissioner (A), Kollam has reduced the demand as per order No.374 & 375/03 dtd. 30-9-2003 allowing the claim of the dealer that they are eligible for exemption from levy of tax on purchase as provided under Schedule VI of SRO.1727/93. A copy of exemption certification (seller certificate) issued to the dealer by the Development Commissioner, Cochin Export Processing Zone (CEPZ) as per order No.29/CEPZ/95 dated 24-8-1995 is enclosed herewith.

(Annexure)

1998-99

Assessment was completed on 23-2-2001 and subsequently revised under Sec.19 in view of audit observation on 18-1-2013. The Deputy Commissioner (Appeals), Kollam has reduced the demand as per Order No.374 & 375/2003 dated 30-9-2003. The appeals for 1997-98 and 1998-99 were disposed by a common order of Deputy Commissioner (Appeals).

The Deputy Commissioner (General) had addressed the Advocate General vide letter No.J1-22313/06, stating that this was a fit case to challenge in TRC before the Hon'ble High Court of Kerala. The Joint Commissioner (Law) Eranakulam had informed the Deputy Commissioner (Legal Wing), Thiruvananthapuram vide letter No:D-167/05 dated 30-8-2006 that there is no scope for filing TRC in this case on the basis of the advice of the Special Government Pleader (Taxes). The views of the Special Government Pleader (Taxes) were seen endorsed by the Additional Advocate General also. Resultantly no TRC was filed.

Recommendation

(Sl.No.4, Para No.52)

The Committee understands that the assessments done for collection of tax from Central Government units on sale of goods was done without proper verification and the contractors exempted the tax on steel and cement given by the Public Works Department which ought not have been exempted. Since the department failed in monitoring the proceedings properly, the Committee recommends that the facts should be verified throughly before the assessment and the department should formulate a proper system in place for similar verifications. The Committee also insists that the Department is bound to realize amounts in all the cases irrespective of whether the materials were supplied by the department or not. Even though the Deputy Commissioner (General) agreed to furnish the documents and copy of instructions on the system in place to validate the veracity of assessments being done, to the Committee, it was not complied with.

Action Taken

The short levy pointed out by the AG is ₹ 371.73 lakh which is the non-realization of the tax due from Central Government Department/Institutions as shown below:-

The Department has taken earnest steps and assessed the CPWD as well as the BSNL to set right the audit objection and collected the following amounts as detailed below:

1. ₹ 60,50,207 through RR
2. ₹ 29,89,802 Ch.No.1370 dtd. 10-8-2007
3. ₹ 2,09,49,447 Ch.No.33 dtd. 31-3-2007
4. ₹ 32,17,492 Ch.No.40 dtd. 3-8-2007 (Under Amnesty Scheme)
5. ₹ 12,00,000 Ch.No.464 dtd. 11-7-2007
6. ₹ 12,00,000 Ch.No.763 dtd. 21-8-2007
7. ₹ 52,67,312 Ch.No.741 dtd. 26-10-2007
8. ₹ 1,83,002 Cheque.No.340563 dtd. 10-10-2007

Total ₹ 4,10,57,262

In VAT scenario according to Sec.10, every awarder has to deduct the tax payable by the contractor in relation to the works awarded by him. For this purpose contractor has to obtain a liability certificate in relation to each work from the assessing authority and has to produce it before the awarder. In cases where such liability certificate is produced before the awarder, the deduction will be made by the awarder on the basis of liability certificate. Where liability certificate is not produced, deduction will be made at the rate specified under Sub Section 2(a) of Sec.10.

It is the responsibility of the awarder to deduct tax at source from every payment made to the contractor, including advance payment. Every awarder shall file a return in Form No.10C to the assessing authority showing the details of works contract awarded during every month on or before the 5th day of the succeeding month in which such deduction is made. The return shall also accompany information on the material, if any supplied by the awarder to the contractor and the price of which has been deducted from the payment made to the contractor. In this regard the Commissioner of Commercial Taxes has issued circular instructions (Circular No. 4/2012) and also provided on-line facility for

e-payment of TDS on works contract after one time enrollment through the website of the Department. For making TDS e-payment, the awarder shall e-file a monthly statement with the details of contract awarded during the period as specified in Form 20 C. The corresponding credit of TDS is automatically transferred to the respective contractors return.

This facility helped the contractor in getting Form 20F from the Awarders without delay.

Recommendation

(Sl.No.5, Para No.53)

The Committee understands that the Department took long time in disposing appeal cases filed against assessments of contractors of civil works on turnover of property in execution of works contract. The Committee is disappointed with the lackadaisical attitude of the Department in not disposing of the appeal cases as per the cut-off time set by the Government. The Committee suspects that this ostrich like proclivity in disposing of cases before any verdict came from the Honourable Supreme court favouring the parties was to purposefully help the defaulters. Though the Department had agreed to submit to the Committee a written explanation for the wilful prolongation that happened in settling cases, it was not done till date. The Committee sees this indifference as a disrespect towards them.

Action Taken

In order to avoid the huge pendency of Appeals under the KGST Act Government have decided to reduce the pendency of appeals under the said Act by assigning jurisdiction to the Assistant Commissioner appointed under the KVAT Act, 2003 to dispose the appeals pending as on 1st April 2005 and the Government of Kerala as per SRO No.790/2008 has ordered to empower Assistant Commissioner (Audit Assessment) appointed under the KGST Act, 2003 also to here and dispose of appeals pending under the KGST Act, 1963 as on 1st April 2005, against appeal filed against orders of assessing authorities.

In order to wipe out the pendency, Government of Kerala constituted an Addl. Appellate Tribunal consisting of Chairman and 2 members to perform the

functions assigned to the Appellate Tribunal with its area of jurisdiction in the revenue districts of Kasargode, Kannur, Wayanad, Kozhikode, Malappuram and Palakkad with Headquarters at Palakkad, as per SRO No.30/13 and 31/2013.

Special Government Pleaders were appointed by Government of Kerala from time to time to appear on behalf of the Taxes Department. In the case of Supreme Court, Standing Counsels are appointed by the Government of Kerala. The concerned officials of the Department discuss the cases with the GPs for effective presentation of the cases before the Court and for taking steps for advance hearing of the cases if needed.

There is huge pendency of appeals before various appellate forums including High Court and Supreme Court.

At present a huge number of appeals are pending adjudication before the 1st Appellate Authority itself. Rs.1412.41 crore are locked in 24336 appeal cases. To Alleviate this, the following measures were announced in the Budget Speech 2016-17 by the Honourable Finance Minister.

1	Hearing of stay petitions and passing orders thereon is identified as the reason in the delay of the disposals. To ease and speed up the process of hearing appeals, the dealer will get automatic stay provided the collected tax if any and 20% of the disputed amount are remitted.
2	For the disposal of pending appeals, the number of Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) will be increased. The number of Appellate Deputy Commissioner will be increased from 9 to 13 and that of Appellate Assistant Commissioner from 5 to 17. Necessary posts will be created for this.
3	Every tax case pending before the High Court will be examined and decision for further course of action for speedy disposal will be taken.
4	Cases where there is no dispute for collection will be identified, examined and classified and revenue recovery proceedings will be intensified.

	As per the announcement at Sl.No.2 above, 4 posts of Deputy Commissioner (Appeals) and 12 posts of Assistant Commissioner (Appeals) have been created and deployed as per G.O.(MS) No.93/2016/Taxes dated 1-10-2016 and G.O.(MS) No.104/2016/Taxes dated 24-11-2016. (Copies enclosed for information). (Annexure)

Recommendation

(Sl.No.6, Para No.54)

With respect to tax exemption granted towards sales turnover the Committee understands that an SRO dated 1-4-2000 had revoked the order which exempted all Khadi and Village Industrial Units from levying of tax. The Committee also understands that there was no Court verdict or Government notifications against this SRO. Under the circumstances the Committee recommends that Khadi and Village Industries be completely exempted from levying of tax how much ever be the turnover. The Committee also recommends that all related units under Khadi & Village Industries Board be completely exempted from any limits of SRO.

Action Taken

As per Para 205 of the Budget Speech 9-10, Government have announced that tax payable by the Khadi and Village Industries Units under the KGST Act 1963, upto 31-3-2005 would be exempted and the related notification; SRO 652/09, 24-7-2009 enclosed herewith.

(Annexure)

Recommendation

(Sl.No.7, Para No.55)

The Committee finds that the Department had assessed tax on royalty at 8% on point of sale as against rules since Supreme Court Judgment clearly mentioned that royalty would form part of only the turnover not of sale amount. Even though Department Officials agreed to produce the related judgment before the Committee for reference, it was not complied with.

Action Taken

As directed by the Committee on Public Accounts a copy of judgment No.(2005) 142 STC (SC) dated:18-5-2005 of Hon'ble Supreme Court of India, related to movable property, is enclosed herewith.

(Annexure)

Recommendation

(Sl.No.8, Para No.56)

With respect to granting of concessional rate of tax on industrial raw materials, the Committee finds that many of the manufacturing units were purposefully furnishing false declaration to evade tax which the Department failed to identify. The Committee urges the Department to keep vigil on exporters while dealing with manufactured goods and also throughly scrutinize the certificate obtained from them before granting any concessional rate of tax.

Action Taken

Recommendation is noted. Copy of the recommendation forwarded to all Deputy Commissioners for urgent compliance.

Recommendation

(Sl.No.9, Para No.57)

The Committee finds that in the case with M/s Tata Tea Ltd., Kochi, the tax remitted by the dealer was incorrectly entered as ₹ 16.64 lakh instead of ₹ 10.64 lakh which resulted in affording of excess credit of ₹ 6 lakh. The Committee doubts a conspiracy behind this negligence shown by the Department because the officials though replied that ₹ 16.64 lakh was erroneous entry and a clerical mistake, a difference of ₹ 1.93 lakh was observed while advising Revenue Recovery since only ₹ 4.07 lakh was assessed, instead of ₹ 6 lakh. The Committee despondently warns the Department from committing such careless acts and redundant mistakes. The Comittee also urges the Department to reconcile this difference as early as possible.

Action Taken

Further developments in the case is furnished here under. The assessee filed appeal before the Deputy Commissioner (A), Eranakulam relating to dispute under turnover tax and the appellate authority as per STA.792/01 to 796/01 dated 15-5-2002, ordered deletion of turnover to the tune of ₹ 29,41,16,854. The modified assessment was completed as per order dated 19-2-2007. After rectification of mistakes and modification of the assessment order, an amount of ₹ 10,27,230 is outstanding as excess. The difference, as pointed out in audit, is reconciled and no amount is pending collection in this case.

Recommendation

(Sl.No.10, Para No.58)

The Committee finds highly improper the failure on the part of the Department in fixing accountability against those officers who were responsible for incorrect assessment and there by not levying tax at prescribed rates on turnover of goods worth ₹ 34.43 lakh with respect to Kerala State Cashew Development Corporation. The Committee remarks that only random checks were performed and urges that the Department needs to streamline the operational side once Accountant General's observations came. The Committee laments that there was inordinate delay on the part of the Department for revision of petition once original assessment was done. The Committee feels abominable on the fact that the delay happened not only on cases pointed out by Audit but also on other cases. The Committee necessitates in keeping a time bar for taking revision petition.

Action Taken

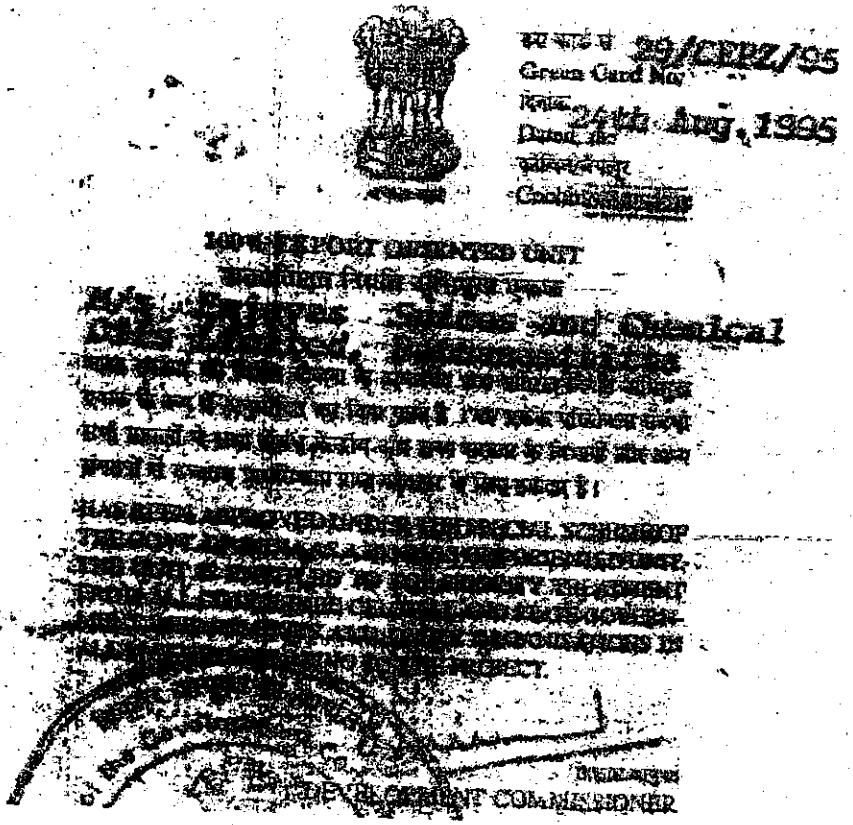
As per section 25 of the KVAT Act-03 the assessing authority could assess the escaped turnover at any time, within five years from the last date of the year to which the return relates. U/S 56 of the KVAT Act, the Deputy Commissioner can suo moto call for and examine the case and pass orders if the assessment is completed prejudicial to the interest of revenue or there is any escape of turnover within a time limit of 4 years. In the case of KSCDC, the assessment was revised and the escaped turnover and tax was assessed with an additional demand of ₹ 1,36,747/ CST and ₹ 69,791 interest. Disciplinary action was also taken against the officer who committed the mistake.

The recommendation of the committee is also brought to the notice of all concerned for strict compliance.

Copies of the revised assessment order and the order taking disciplinary action against the concerned officer are enclosed herewith. (Annexure) It is also reported that the amount pending collection is under RR vide RRC No.10/2003-04 dated 15-5-2003.

V. D. SATHEESAN,
Chairman,
Committee on Public Accounts.

Thiruvananthapuram,
3rd December, 2018.



Green Card No. 29/CERT/95
Date 24th Aug, 1995

DEPUTY DEVELOPMENT COMMISSIONER

GOVERNMENT OF KERALA

Abstract

Taxes Department- Commercial Taxes Department – Establishment- Deployment of newly created posts of Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) in Commercial Taxes Department along with re-designation of certain existing posts and fixation of their jurisdiction - Orders issued.

TAXES (D) DEPARTMENT

G.O.(Ms) No. 104 /2016/Taxes Dated, Thiruvananthapuram, 24.11.2016

Read:- 1) G.O(Ms)No.93/2016/Taxes dated 01.10.2016.

2) Letter No.A1- 35435/11/CT dated 15.08.2016 from the Commissioner of Commercial Taxes, Thiruvananthapuram.

ORDER

As per the Government Order read as 1st paper above, 4 posts of Deputy Commissioner (Appeals) and 12 posts of Assistant Commissioner (Appeals) were created in the Commercial Taxes Department for disposing off the appeals pending in the Commercial Taxes Department. As per the letter read as 2nd paper above, the Commissioner of Commercial Taxes has requested to deploy the newly created posts and to specify the jurisdictional area attached to each of the posts. Government have examined the matter in detail and are pleased to deploy the newly created posts of Deputy Commissioners and Assistant Commissioners along with the existing posts in the Commercial Taxes Department as follows.

Sl No.	Posts Created	Designation	Office and Headquarters	Jurisdictional District
1	Deputy Commissioner (Appeals)	Deputy Commissioner (Appeals) IV, Ernakulam.	Office of the Deputy Commissioner (Appeals), Ernakulam	Ernakulam Revenue District
2	Deputy Commissioner (Appeals)	Deputy Commissioner (Appeals) V, Ernakulam	Office of the Deputy Commissioner (Appeals), Ernakulam	Ernakulam Revenue District

3	Deputy Commissioner (Appeals)	Deputy Commissioner (Appeals), Thrissur	Office of the Deputy Commissioner, Thrissur	Thrissur Revenue District
4	Deputy Commissioner (Appeals)	Deputy Commissioner (Appeals), Palakkad	Office of the Deputy Commissioner, Palakkad	Palakkad Revenue District.

2. The post of Deputy Commissioner (Appeals)-1, Kottayam is hereby shifted to Ernakulam and is re-designated as Deputy Commissioner (Appeals)-III Ernakulam with jurisdiction of Ernakulam Revenue District and Headquarters at Office of the Deputy Commissioner (Appeals), Ernakulam.

3. The post of Deputy Commissioner (Appeals)-II Kottayam is hereby re-designated as Deputy Commissioner (Appeals), Kottayam with jurisdiction of Kottayam and Idukki Revenue Districts with headquarters at the Office of the Deputy Commissioner, Kottayam.

4. The Deputy Commissioners to which the office of the Deputy Commissioner (Appeals) attached with are hereby directed to make necessary arrangements including deployment of staff and office conveniences for the smooth functioning of the offices of the newly created or re-designated Deputy Commissioners (Appeals).

5. The deployment of newly created posts of Assistant Commissioner (Appeals) is ordered as follows;

Sl No.	Post Created	Designation	Office and Headquarters	Jurisdictional Revenue District
1	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Kollam	Office of the Deputy Commissioner (Appeals), Kollam	Kollam
2	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Alappuzha	Office of the Inspecting Assistant Commissioner, Alappuzha	Alappuzha
3	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Pathanamthitta	Office of the Inspecting Assistant Commissioner, Pathanamthitta	Pathanamthitta

4	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Kottayam	Office of the Deputy Commissioner, Kottayam	Kottayam
5	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Idukki	Office of the Inspecting Assistant Commissioner, Idukki	Idukki
6	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals) I, Ernakulam	Office of the Deputy Commissioner (Appeals), Ernakulam	Ernakulam
7	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals) II, Ernakulam	Office of the Deputy Commissioner (Appeals), Ernakulam	Ernakulam
8	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals) III, Ernakulam	Office of the Deputy Commissioner (Appeals), Ernakulam	Ernakulam
9	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Malappuram	Office of the Inspecting Assistant Commissioner, Malappuram	Malappuram
10	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Kannur	Office of the Inspecting Assistant Commissioner, Kannur	Kannur
11	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Wayanad	Office of the Inspecting Assistant Commissioner, Wayanad	Wayanad
12	Assistant Commissioner (Appeals)	Assistant Commissioner (Appeals), Kasargode	Office of the Inspecting Assistant Commissioner, Kasargode	Kasargode

6.The posts of Assistant Commissioners presently working as Assistant Commissioner (Appeals) on deputation are re-designated as follows;

Sl No	Present post	Re-designated post	Office and Headquarters	Jurisdiction
1	Assistant Commissioner 1, Special Circle-1, Thrissur	Assistant Commissioner (Appeals), Thrissur	Office of the Inspecting Assistant Commissioner, Thrissur	Thrissur Revenue District
2	Assistant Commissioner IV, Special Circle-I, Kozhikkode	Assistant Commissioner (Appeals), Palakkad	Office of the Inspecting Assistant Commissioner, Palakkad	Palakkad Revenue District
3	Assistant Commissioner-III, Special Circle II, Kozhikkode	Assistant Commissioner (Appeals), Kozhikkode	Office of the Deputy Commissioner (Appeals), Kozhikkode	Kozhikkode Revenue District

7.The Commissioner of Commercial Taxes is hereby directed to take measures to assign or re-distribute the cases/ files to the officers of the newly created or re-deployed Deputy Commissioner (Appeals) and Assistant Commissioner (Appeals) as per their jurisdiction with immediate effect.

(By Order of the Governor),
P. MARA PANDIYAN IAS
Additional Chief Secretary to Government

To

The Commissioner of Commercial Taxes, Thiruvananthapuram
The Principal Accountant General (A&E), Kerala, Thiruvananthapuram.
The Accountant General(E&RSA),Kerala,Thiruvananthapuram.
The Director, Information and Public Relations Department
(Web and New Media)
Stock File / Office Copy

Forwarded/ By Order,

Section Officer

(Kerala Gazette Extra Ordinary No. 1026 dated 9th June, 2009)

GOVERNMENT OF KERALA

Taxes (B) Department

NOTIFICATION

G.O.(P) No. 186/2009/TD Dated, Thiruvananthapuram, 24th June, 2009

S.R.O. No. 652/2009.- In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963) read with sub-section (5) of section 98 of Kerala Value Added Tax Act, 2003 (30 of 2004), the Government of Kerala having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable under the Kerala General Sales Tax Act by Khadi and Village Industries Units recognized by the Kerala Khadi and Village Industries Board of the State or the Khadi and Village Industries Commission of India on their turnover of sale of products manufactured by them within the State and turnover of purchase of goods which are taxable at the point of first purchase or last purchase for use in the manufacture of products by them within the state for sale, upto 31st March, 2005 subject to the condition that the units shall produce the certificate of approval issued by the Khadi and Village Industries Commission or the Kerala Khadi and Village Industries Board.

Tax if any, already collected shall be paid over to Government and tax if any already paid shall not be refunded.

By order of the Governor,
P. Mara Pandiyan,
Principal Secretary to Government

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport)

As per para 205 of the Budget Speech 2009-2010, Government have announced that, tax payable by the Khadi and Village Industries Units under the Kerala General Sales Tax Act, 1963, up to 31st March, 2005 would be exempted.

This notification is intended to achieve the above object.

(Kerala Gazette Extra Ordinary No.1378 dated 28th July, 2009)

[2005] 142 STC 1 (SC)

[IN THE SUPREME COURT OF INDIA]

State of H.P. and others

v.

Gujarat Ambuja Cement Ltd. and another (and other appeals)

RUMA PAL AND ARIJIT PASAYAT AND THAKKER C.K.

July 18, 2005

HF ♦ Assessee, including dealer (Registered or Unregistered), Not favouring any one, General principles, Words & Phrases.

HIGH COURT — WRIT JURISDICTION — EXISTENCE OF ALTERNATIVE REMEDY — ONLY A RULE OF SELF-IMPOSED LIMITATION — CONSTITUTION OF INDIA, ART. 226.

PURCHASE TAX — ROYALTY UNDER MINING LEASE — NOT SALE PRICE — HIMACHAL PRADESH GENERAL SALES TAX ACT (24 OF 1968), SEC. 5-A — MINES AND MINERALS (REGULATION AND DEVELOPMENT) ACT (67 OF 1957), SEC. 9.

EXEMPTION — INCENTIVE SCHEME — INDUSTRIAL UNITS — PRESTIGIOUS CEMENT INDUSTRIAL UNIT — SATISFACTION OF ELIGIBILITY CRITERIA — NO FORMAL CERTIFICATION — NOT RELEVANT — INCENTIVE RULES REVISED FROM TIME TO TIME — NO ADDITIONAL CRITERIA PRESCRIBED — STATUS ACCORDED EARLIER CONTINUES — UNIT ENTITLED TO AVAIL OF NEW INCENTIVE — HIMACHAL PRADESH GENERAL SALES TAX ACT (24 OF 1968), SEC. 42 — REVISED RULES REGARDING GRANT OF INCENTIVES TO INDUSTRIAL UNITS IN HIMACHAL PRADESH, 1991.

EXEMPTION — CONDITION PRECEDENT — NON-COMPLIANCE WITH PROVISIONS OF ACT OR RULES OR NOTIFICATIONS — FAILURE TO FURNISH FORM C — NOT A CASE OF NON-COMPLIANCE — CENTRAL SALES TAX ACT (74 OF 1956), SEC. 8(5) — CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957, RULE 12(7), FORM C — REVISED RULES REGARDING GRANT OF INCENTIVES TO INDUSTRIAL UNITS IN HIMACHAL PRADESH, 1991.

REVISION — SCOPE OF POWERS OF COMMISSIONERS — NO POWER TO REVISE ASSESSMENT ORDER AFTER APPEAL IS THEREFROM DECIDED — ASSESSMENT ORDER MERGES IN APPELLATE ORDER — HIMACHAL PRADESH GENERAL SALES TAX ACT (24 OF 1968), SEC. 31(3).

WORDS AND PHRASES — "ROYALTY", "DEAD RENT", MEANINGS OF.

The rule relating to the existence of an alternative remedy as barring the writ jurisdiction under article 226 of the Constitution of India is only a rule of self-imposed limitation: it is essentially a rule of policy, convenience and discretion. Despite the existence of an alternative remedy, it is within the discretion of the High Court to grant relief under article 226. At the same time, though the matter relating to an alternative remedy has nothing to do with the jurisdiction, normally the High Court should not interfere if there is an efficacious alternative remedy. When a party approaches the High Court under article 226 without availing of the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. After considering the pros and cons of the case the High Court may interfere: (a) if it comes to the conclusion that the petitioner seeks the enforcement of a fundamental right; (b) if there is failure of the principles of natural justice; or (c) the orders or proceedings are wholly without jurisdiction; or (d) the vires of an Act is challenged. (see paras 18 and 21)

The amount of royalty paid for limestone or shale under a mining lease cannot be considered to be sa[illegible]price of the minerals extracted and the right secured under a contract of such a lease does not constitute an agreement of sale or purchase of goods so as to attract liability to purchase tax under section 5-A of the Himachal Pradesh General Sales Tax Act, 1968.

Though section 9 of the Mines and Minerals (Regulation and Development) Act, 1957, refers to "minerals removed" it does not mean that the royalty is paid on removal. It is the point of payability. Royalty in the context of the agreement is an alternate to dead rent. Section 9 speaks of rates of royalty. It is nothing but a measure of levy. The charging of "dead rent" and "royalty" is under different situations. It is shifting of the measure. Both "dead rent" and "royalty" are returns to the lessor. Under section 9 royalty is not a payment in respect of any mineral removed or consumed. Royalty is not a money consideration for transfer of property. A mining lease is an interest in immovable property and extraction and removal of minerals is essentially an extension of the enjoyment of immovable property. (see paras 50 and 51)

State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985] 60 STC 213 (SC) and D.K. Trivedi & Sons v. State of Gujarat (1986) Supp SCC 20 applied.

Cooch Behar Contractors' Association v. State of West Bengal [1996] 103 STC 477 (SC); (1996) 10 SCC 380 overruled.

Under rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, the declaration form (form C) need not necessarily be filed along with returns; it can be filed at a subsequent point of time. On an application being made before the assessing authority extension of time can be granted. The object of the rule is to ensure that the dealer is not denied a benefit which is available to him under law on a technical plea. That the assessing officer is empowered to grant time means that the provision requiring filing of the declaration forms along with the return is a directory provision and not mandatory. In a given case the declaration forms can be filed even before the appellate authority, as an appeal is continuation of the assessment proceedings. If the appellate authority is satisfied that the dealer was prevented by reasonable and sufficient cause which disenabled him to file the form in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. (see para 40)

On March 27, 1991, the Industrial Development Department of the Himachal Pradesh Government notified the grant of certain incentives for new as well as already established units in the State of H.P. in respect of deferment of sales tax, electricity duty, etc. On July 31, 1992, the Industries Department issued another notification introducing the concept of "Prestigious and Pioneer Industries", by suitably amending the earlier notification. Under the 1992 notification a "Prestigious Unit" meant any new industrial unit which went into commercial production on or after May 1, 1992, it was registered with the Empowered Committee between May 1, 1992 and March 31, 1993, and it had a fixed capital investment of at least Rs. 50 crores and employed at least 200 persons on regular basis. Thereafter on December 1, 1994, the Industries Department made further amendments to the earlier notifications of 1991 and 1992 and brought into existence the concept of "Prestigious Cement Unit" according to which the unit had to go into commercial production after May 1, 1992, and had to be registered with the Empowered Committee between May 1, 1992 and March 31, 1995. The conditions for eligibility for exemption were the same. On July 6, 1995, Industries Department again amended rule 27(1) of the Rules—the rules were incorporated in those notifications—regarding the grant of incentive to Prestigious Cement Units, notifying that sales tax exemption/deferment of both H.P. sales tax and Central sales tax would be available for a period of 12, 9 and 7 years in respect of category A, B and C blocks respectively. GAC, which carried on the business of manufacture and sale of cement, obtained provisional sales tax registration for H.P. sales tax on February 14, 1992, which was extended from time to time up to June 30, 1995. Ultimately, it was granted a permanent registration with effect from August 11, 1995, the date on which it started trial production. In its meeting held on November 25, 1992, the Empowered Committee decided in favour of GAC a registration certificate of Prestigious Unit and, on January 13, 1993, the Director of Industries issued registration certificate as a Prestigious Unit. As production could not be commenced, the Department of Industries approved the grant of further extension till June 30, 1995, and thereafter up to September 30, 1995. GAC started trial production on August 11, 1995, and regular commercial production on September 26, 1995. This entitled it to exemption from sales tax in terms of the notifications. A formal certificate was also issued by the Department of Industries on January 24, 1996, specifying the commencement of commercial production on September 26, 1995, and confirming that the investment was about Rs. 391 crores and that the employment of 353 persons was on regular basis. Thereafter, the Excise and Taxation Department of H.P. issued a notification

dated January 30, 1995 specifically stating that GAC had been granted exemption from payment of sales tax subject to fulfilment of the conditions enumerated therein, placing it in the category of block B whereby it was stated to be eligible for exemption for 9 years. A formal declaration was also made by the Industries Department on February 2, 1996, declaring GAC to be a "Prestigious Cement Industrial Unit". For the assessment year 1995-96 the assessing authority granted exemption to GAC with effect from January 30, 1995 instead of September 26, 1995, as claimed by GAC. On May 27, 1997, another order of assessment was passed that the exemption to be granted as only from February 2, 1996, the date on which the notification was actually published. GAC preferred appeals against both the orders. Those appeals were later dismissed. Pending these proceedings, GAC filed a writ petition in the High Court alleging that certain persons belonging to a political party in coalition with another party made statements against its entitlement to exemption under the Incentive Scheme and that action was being taken by the Commissioner on account of such extraneous reasons and with ulterior motive proposing to revise the orders passed by the assessing authority and to revoke the exemption granted to GAC as a "Prestigious Cement Unit". Since, in the meantime the Commissioner issued show cause notices for the years 1992-93 to 1995-96 proposing to hold that the assessments for those years were illegal and to impose penalty, GAC filed further writ petitions challenging those notices. The High Court allowed the writ petitions and quashed the orders of the sales tax authorities holding that. (i) so long as the GAC satisfied the eligibility criteria, GAC would be entitled to the benefits and incentives under the notifications and it was not permissible even for the State Government to override or negate the incentive or benefits; and (ii) the levy of purchase tax on royalty paid was not legally sustainable. On appeals preferred by the Department to the Supreme Court challenging, inter alia, the maintainability of the writ petitions:

Held, affirming the decision of the High Court (i) that the writ petitions were maintainable. The alternative of the statutory remedy provided would be an exercise in futility in view of reasons indicated in the writ petition. Further, since the High Court had elaborately dealt with the question as to why the statutory remedy available was not efficacious and entertained the writ petitions, the Supreme Court would not on an appeal therefrom permit the question to be raised unless the High Court's reasons for entertaining the petitions were found to be palpably unsound or irrational; (see para 23)

First Income-tax Officer v. Shori Brothers (P.) Ltd. [1966] 60 ITR 83 (SC); [1966] 3 SCR 84, State of U.P. v. Indian Hume Pipe Co. Ltd. [1977] 39 STC 355 (SC); (1977) 2 SCC 724 and Ram and Shyam Company v. State of Haryana AIR 1985 SC 1147 relied on.

(ii) that finality was attached to the decision of the Empowered Committee to stipulate the commencement date of the unit. After the new definition of "Prestigious Cement Industrial Unit" the Director of Industries had extended the date for commencement of production up to June 30, 1995, and subsequently up to September 30, 1995. The registration with the Empowered Committee was not affected by the new definition of "Prestigious Cement Industrial Unit" as there was nothing in the notification dated December 1, 1994, which required registration of those units which had obtained registration between May 1, 1992 and December 1, 1994; (see paras 29 to 31)

(iii) there was no dispute that GAC had commenced production on September 26, 1995. There was a notification dated December 31, 1994, under section 42 of the Act granting exemption from sales tax for pioneer industries from the date of commercial production. Exemption notifications under section 6(5) of the Central Sales Tax Act, 1956, and section 42(1) of the H.P. General Sales Tax Act, 1968, were issued by the Governor of H.P. and therein GAC was expressly named as a Prestigious Cement Industrial Unit. The denial by the revisional authority of the benefit was, however, based on evasion of tax. There was no question of the department subsequently raising a question that GAC was not registered between the specified dates. The certificate dated February 2, 1996, was a declaration issued by the Empowered Committee and it declared, confirmed and restated the status of GAC: it did not create any such status for the first time. Therefore, the plea about non-entitlement of GAC of the sales tax benefits and exemptions was clearly misconceived; (see paras 31, 35 and 37)

(iv) that GAC had questioned the correctness of the fixation of the dates from which it was entitled to exemption by filing appeals and the assessment orders merged with the appellate orders so far as the entitlement of the concessions was concerned. The revisional authority did not take note of those appellate orders. The assessment orders having merged with the appellate orders, the revisional authority could not revise them; and (see para 38)

(v) that the duty to furnish within time declarations in form C under rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957, was not mandatory and was only directory. Since the time within which the forms were to be furnished could be extended on application showing sufficient cause, the question of non-compliance with the statute did not arise. (see para 40)

[The Supreme Court granted time of two months to GAC to respond to the notices issued by the revisional authority and the revisional authority was to consider the desirability of continuing the proceedings on those notices after considering the reply of GAC.]

Decision of the Himachal Pradesh High Court in Gujarat Ambuja Cement Ltd. v. Assessing Authority-cum-Assistant Excise and Taxation Commissioner [2000] 118 STC 315 affirmed in substance.

"ROYALTY", MEANINGS OF.

"The amount of royalty paid for limestone or shale under a mining lease cannot be considered to be sale price of the minerals extracted and the right secured under a contract of such a lease does not constitute an agreement of sale or purchase of goods so as to attract liability to purchase tax ..."

Though the section ... refers to "minerals removed" it does not mean that the royalty is paid on removal. It is the point of payability. Royalty in the context of the agreement is an alternate to dead rent ... it is nothing but a measure of levy. The charging of "dead rent" and "royalty" is under different situations. It is shifting of the measure. Both "dead rent" and "royalty" are returns to the lessor. Under the section ... royalty is not a payment in respect of any mineral removed or consumed. Royalty is not a money consideration for transfer of property. A mining lease is an interest in immovable property and extraction and removal of minerals is essentially an extension of the enjoyment of immovable property.

"DEAD RENT", MEANINGS OF.

The charging of "dead rent" and "royalty" is under different situations. It is shifting of the measure. Both "dead rent" and "royalty" are returns to the lessor.

Civil Appeal No. 2641 of 2000, Civil Appeals Nos. 2642, Civil Appeals Nos. 3744, Civil Appeals Nos. 3745, Civil Appeals Nos. 3746 of 2000 decided on July 18, 2005

Harish N. Salve, Dr. A.M. Singhvi, Manmohan, R.F. Nariman and Manmohan Khanna, Senior Advocates (Ms. Bina Gupta, Manish Jha, Mrs. Divya Roy, U.A. Rana, Ms. Sumathi K., Biju Mattam, C.P. Pandey, B.K. Satija and Varinder Kumar Sharma, Advocates, with them), for the respondents.
Anoop G. Chaudhary, Senior Advocate (J.S. Attri, Additional Advocate-General for Himachal Pradesh, L.R. Seth, Atul Sharma, Ms. June Chaudhary, Advocates, with him), for the appellants.

Cases referred to :
State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985] 60 STC 213 applied
D.K. Trivedi & Sons v. State of Gujarat [1986] Supp SCC 20 applied
Cooch Behar Contractors Association and Others v. State of West Bengal and Others [1996] 103 STC 477 overruled
First Income-tax Officer v. Short Brothers (P.) Ltd. [1966] 060 ITR 0083 relied on
First Income-tax Officer v. Short Brothers (P.) Ltd. [1966] 3 SCR 84 relied on
State of U.P. and Others v. Indian Hume Pipe Co. Ltd. [1977] 39 STC 355 relied on
Ram and Shyam Company v. State of Haryana [1985] AIR SC 1147 relied on
Gujarat Ambuja Cement Ltd. and Another v. Assessing Authority-Cum-Assistant Excise and Taxation Commissioner and Others [2000] 118 STC 315 affirmed in substance
Abraham (C.A.) v. Income-tax Officer [1961] 041 ITR 0425
Abraham (C.A.) v. Income-tax Officer [1961] AIR SC 609
Assistant Collector of Central Excise v. Dunlop India Ltd. [1985] AIR SC 330
Cooch Behar Contractors Association and Others v. State of West Bengal and Others [1996] 103 STC 477

Ram Chhotabhai Jethabhai Patel & Co. v. State of Madhya Pradesh [1959] SCR 470.
Rel Income-tax Officer v. Shori Brothers (P.) Ltd [1959] 036 ITR 0063
Rel Income-tax Officer v. Shori Brothers (P.) Ltd [1958] 3 SCR 64
RD Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal and Others v. Gopi Nath & Sons and Others [1990] 77 STC 1
SKN Driveshafts (India) Ltd. v. Income-tax Officer [2003] 259 ITR 0019
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Ram and Shyam Company v. State of Haryana [1985] AIR SC 1147
Ramendra Kishore Biswas v. State of Tripura [1999] AIR SC 294
Rashid and Son (K.S.) v. Income-tax Investigation Commission [1954] 025 ITR 0167
Rashid and Son (K.S.) v. Income-tax Investigation Commission [1954] AIR SC 207
Rajasthan State Road Transport Corporation v. Krishna Kant [1995] AIR SC 1715
Regin v. Hillingdon London Borough Council [1974] 1 QB 720
Sahney Steel and Press Works Ltd. and Another v. Commercial Tax Officer and Others [1985] 60 STC 301
Sangram Singh v. Election Tribunal [1955] AIR SC 425
Sheela Devi v. Jaspal Singh [1999] 1 SCC 209
Shivgonda Anna Patil v. State of Maharashtra [1999] AIR SC 2281
Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [2001] 8 SCC 509
Siliguri Municipality v. Amalendu Das [1984] AIR SC 653
State of Bihar and others v. Suprabhat Steel Ltd. and others (and other appeals) [1999] 112 STC 258
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State of Madhya Pradesh and Others v. Orient Paper Mills Ltd. [1977] 40 STC 603
State of Madhya Pradesh v. Yakinuddin [1962] AIR SC 1916
State of Madhya Pradesh v. Yakinuddin [1963] 3 SCR 13
State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985] 60 STC 213
State of U.P. and Others v. Indian Hume Pipe Co. Ltd. [1977] 39 STC 355
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State of West Bengal v. Kesoram Industries Ltd. [2004] 2 RC 298
State of West Bengal v. Kesoram Industries Ltd. [2004] JT 1 SC 375
Sudhakar Reddy (L.L.) v. State of A.P. [2001] 6 SCC 634
Tin Plate Co. of India Ltd. v. State of Bihar and others [1999] 112 STC 543
Tin Plate Co. of India Ltd. v. State of Bihar [1983] 53 STC 315
Trivedi & Sons (D.K.) v. State of Gujarat [1986] Supp SCC 20
Union of India v. T.R. Varma [1957] AIR SC 882
Veerappa Pillai (G.) v. Raman and Raman Ltd. [1952] AIR SC 192
Veluswami Thevar (N.T.) v. G. Raja Nainar [1959] AIR SC 422
K.S. Venkataraman and Co. (P.) Ltd. v. State of Madras [1966] 17 STC 418

The judgment of the Court was delivered by

ARIJIT PASAYAT, J.—These appeals are inter-linked and, therefore, are taken up together for disposal. Civil Appeal Nos. 2641 and 2642 of 2000 relate to respondent-Gujarat Ambuja Cement Ltd. (in short, "Gujarat Ambuja") while Civil Appeal Nos. 3744-3746 of 2000 relate to respondent-Associated Cement Ltd. (in short, "ACC"). The common question so far as the appeals are concerned linking the respondents in the appeals relates to one issue, i.e., liability to pay purchase tax on the royalty paid by the respondents. As other issues are involved in Gujarat Ambuja's cases, the factual scenario in Civil Appeal Nos 2641-2642 of 2000 needs to be noted in some detail.

2. Challenge in these appeals is to the judgments rendered by a division Bench of the Himachal Pradesh High Court. Writ petitions were filed by the present respondents questioning the action taken by the sales tax authorities and the revisional orders passed setting aside the orders of assessment framed for the assessment years 1995-96 and 1996-97 under the Central Sales Tax Act, 1956 (in short, "the Central Act") and the Himachal Pradesh General Sales Tax Act, 1968 (in short, "the Act").

3. So far as the Gujarat Ambuja is concerned, the factual and legal background was highlighted in the writ petitions before the High Court as follows:

It is a public limited company incorporated under the Companies Act, 1956, inter alia, carrying on the business of manufacture and sale of cement under the name and style of "Ambuja Cement" in the State of Himachal Pradesh and that it ranks amongst one of the best managed cement companies in India. It had been conferred various prestigious awards for its performance, pollution control and management including the award in the year 1991 by the Prime Minister of India, namely, "National Award for Public Recognition of Outstanding Activity for prevention of control of pollution". It submitted an application in the year 1989 for setting up a cement plant in Himachal Pradesh and it was approved by the State Level Industrial Projects and Review Authority (hereinafter referred to as "IPARA") in their letter dated February 19, 1990. It invested more than Rs. 500 crores in setting up the cement plant at Darlaghat, Solan District of Himachal Pradesh and it is the largest investment made by any private entrepreneur so far as the State is concerned. The said cement project also had the approval of the World Bank/International Finance Corporation, Washington, which also financed the project by way of term loan in addition to the project being monitored by the Industrial Development Bank of India too. All these brought substantial economic development in the State.

4. On March 27, 1991, the Industrial Development Department of Himachal Pradesh Government issued an incentive scheme by [illegible] notifying the grant of certain incentives for new as well as already established units in the State in respect of deferment [illegible] of sales tax, electricity duty, etc. Writ petitioner obtained [illegible] sales tax registration from the Himachal Pradesh General Sales Tax Department on February 14, 1992, which was extended from time to time up to June 30, 1995, before ultimately being granted with permanent registration with effect from August 11, 1995, the date on which the petitioner started its trial production. On July 31, 1992, the Industries Department issued another notification introducing the concept of "Prestigious and Pioneer Industries" by amending suitably the earlier notification dated March 27, 1991, according to which "Prestigious Unit" meant any new industrial unit, which goes into commercial production in the State on or after May 1, 1992 and

is registered with the Empowered Committee appointed under rule 24 between May 1, 1992 and March 31, 1993, which has a fixed capital investment of at least Rs. 50 crores and employed at least 200 persons on regular basis. The Empowered Committee considered the issue of grant of registration certificate as Prestigious unit in its meeting held on November 25, 1992 and decided to grant the same to Gujarat Ambuja treating it as a "Prestigious Unit". Consequently, the Director of Industries, Himachal Pradesh, issued on January 18, 1993 the required registration certificate registering the petitioner-unit as a "Prestigious Unit". As the production of the unit could not be commenced by January, 1995, which was one of the stipulated conditions, taking into account the substantial progress made by the company, the Industries Department by its letter dated January 28, 1995, approved the grant of further extension initially till June 30, 1995 and thereafter up to September 30, 1995 by their letters dated January 28, 1995 and June 30, 1995. On December 1, 1994, the Industries Department made further amendments to the notification dated March 27, 1991 and July 31, 1992, and brought into existence the concept of "Prestigious Cement Unit", according to which the unit must go into commercial production after May 1, 1992 and registered with the Empowered Committee under rule 24 between May 1, 1992 and March 31, 1995. By the said amendment, it was also notified that such unit should have a fixed capital of Rs. 50 crores and employed at least 200 persons on regular basis. It is to be noted that by notifications dated March 27, 1991 and July 31, 1992 Rules were notified. They were called Revised Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1991 (in short, "1991 Rules") and Revised (Amendment) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1992 (in short, "1992 Rules"). The Revised Rules were further amended by notifications dated December 1, 1994 and July 6, 1995 and these amended Rules were called Revised (Amendment II) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1994 (in short, "1994 Rules") and Revised (Amendment-III) Rules regarding grant of Incentives to Industrial Units in Himachal Pradesh, 1995 (in short, "1995 Rules"). The 1991 Rules, as the notification of March 27, 1991 shows, were made after supersession of Rules-I dated October 4, 1976, Rules 9-4/73-SI-IV dated May 14, 1980, No. 10-27/71-SI dated August 28, 1984 and No. 9-4/73-V dated January 5, 1985.

5. In the light of all these, the Excise and Taxation Department issued a notification dated December 31, 1994 to grant exemption from payment of sales tax to pioneer industries, bifurcated in different categories with effect from the date of their commercial production against the periods as enumerated in the notification, which was further amended on March 27, 1995 introducing para 1(a) and 1(b). On July 6, 1995, the Department of Industries again amended rule 27(1) regarding the grant of incentive to Prestigious Cement Units notifying that sales tax exemption/deferment under both Central tax and Himachal Pradesh general sales tax shall be available for a period of 12, 9 and 7 years in respect of categories A, B and C blocks, respectively, to new Prestigious Cement Units excluding from its purview the only existing cement unit, as per which the eligible cement units were those, which had come into commercial production within the State of Himachal Pradesh on or after May 1, 1992

6. On August 11, 1995, Gujarat Ambuja started trial production and on September 26, 1995 regular commercial production was started. This entitled the company to exemption from sales tax in terms of the notifications referred to supra. A formal certificate was also issued by the Department of Industries on January 24, 1996 specifying the commencement of the commercial production on September 26, 1995 confirming at the same time about the investment of about rupees 391 crores and employment of 353 persons on regular basis. Sales tax due was paid to the Department for the intervening period from August 11, 1995 to September 25, 1995. The Excise and Taxation Department issued an amendment on January 30, 1996 to the earlier notification dated December 31, 1994 and introduced para 1(c) which was published in the Official Gazette on February 6, 1996, whereunder the State Government had specifically given exemption to Gujarat Ambuja from payment of sales tax subject to the fulfilment of certain conditions enumerated in the notification being a company classified and placed in the category of industrial Block "B" in terms of which it was shown to be eligible to avail of the concession of exemption for 108 months (9 years).

7. Since the unit was already registered as a "Prestigious unit" on January 13, 1993 in accordance with the notification issued by the State Government on July 31, 1992 by the Empowered Committee in its meeting held on November 25, 1992 and inasmuch as the requirements of the "Prestigious Unit" and the "Prestigious Cement Unit" were absolutely one and the same, unit was mentioned and referred to in the notification dated January 30, 1996 and a formal declaration was also made by the Industries Department on February 2, 1996 declaring the petitioner to be a "Prestigious Cement Industrial Unit" keeping in view the satisfaction of all the requisite eligibility criteria. The unit fulfilled all the conditions as required under rule 2(rr), as mentioned in the notification dated July 6, 1995 as well as January 30, 1996, issued by the Industries Department as also the Excise and Taxation Department of the State Government having regard to the fact that the unit has come into commercial production

March 1, 1992, that it was registered with the Empowered Committee as a "Prestigious Unit" on January 13, 1993, that it has actually made investment of more than rupees 50 crores and had also employed more than 200 persons on regular basis. The Director of Industries has issued a certificate in form STE-III on February 15, 1996 certifying that the unit had been registered as a "Prestigious Cement Industrial Unit" with the Empowered Committee, pursuant to which an application was made to the Excise and Taxation Department for the grant of exemption certificate in STE-II before the assessing authority and thereupon on June 11, 1996, the prescribed authority after due enquiry issued a certificate of exemption in form STE-II for the period from January 30, 1996 to March 31, 1996 and the same was extended further from time to time up to March 31, 1998.

8. On March 14, 1997, the assessing authority passed an order of assessment for the assessment year 1995-96 and granted exemption with effect from January 30, 1996. Aggrieved by a portion of the order, Gujarat Ambuja filed an appeal before the Additional Excise and Taxation Commissioner/Appellate Authority on the ground that the exemption should have been allowed from the date of commencement of the commercial production, namely, September 26, 1995 and not from January 30, 1996, the date of issuance of exemption notification. On May 27, 1997, the Sales Tax Department passed an order of assessment for the year 1995-96 granting exemption from payment of the sales tax with effect from February 6, 1996, which is the date on which the notification was actually published instead of from January 30, 1996 with reference to which it was granted earlier. Once again, in respect of this order also, an appeal was filed before the Additional Excise and Taxation Commissioner/ Appellate Authority challenging the same on the ground that the exemption should have been granted from the date of commencement of the commercial production, namely, September 26, 1995 and not as is sought to be given by the authorities concerned. For the assessment year 1996-97, the assessing authority passed an order dated October 24, 1997, after considering all the relevant material on record granting exemption from the payment of sales tax.

9. While matter stood thus, according to the respondents on March 24, 1998 when two political parties formed a Coalition Government in the State of Himachal Pradesh, the Excise and Taxation Minister, who belonged to a political party and the leaders of that party started issuing number of statements against the respondent-

company by prejudging the issue and questioning its entitlement for exemption under the Incentive Scheme announced. These statements in the shape of press cuttings were annexed to the writ petition. It was contended that on account of such extraneous reasons and influence and with ulterior motive, action was initiated by the Commissioner of Sales Tax without any justification in law and in an arbitrary manner proposing to revise the orders passed by the assessing officer in exercise of the powers conferred under section 31(1) of the Act and for that purpose on April 29, 1998, issued a show cause notice calling upon the respondents to show cause as to why the exemption granted cannot be revoked on the ground that the declaration of the petitioner as a "Prestigious Cement Unit" within the meaning of para 1(c) of the notification was not correct for the

reasons set out in the said notice. It was also proposed to revoke STE-II. On May 4, 1998, the revisional authority issued three other show cause notices being Revision Nos. 2, 3 and 4, both under the Central Act for the year 1995-96 and Act for the year 1996-97 and the Central Act for the year 1996-97 questioning the legality and propriety of the earlier assessment orders granting exemption on the ground that the petitioner was not a Prestigious Cement Unit within the meaning of para 1(C) of the notification dated December 31, 1994 and, therefore, was not entitled to any exemption from sales tax either under the State Act or the Central Act. It was also indicated in the show cause notices about the non-payment of the tax payable under section 5-A of the Act. As a sequel of the said notices issued by the revisional authority, the assessing authority also issued show cause notice proposing to withdraw the exemption accorded earlier in form STE-II for the assessment year 1997-98 on similar grounds as were assigned by the revisional authority in its notices, calling upon the respondent-company to appear before the said authority on June 18, 1998. So far as the two appeals filed by the petitioners before the Additional Commissioner (Appeals) against the assessment orders dated March 14, 1997 and May 27, 1995 for the assessment year 1995-96 are concerned, the appellate authority by its order dated October 3, 1998 and October 9, 1998 respectively dismissed the appeals upholding the assessment framed by the assessing officer and endorsed the view that the assessee was entitled to exemption from payment of sales tax with effect from February 6, 1996, the date of publication of the notification only and not from the date of commencement of commercial production, namely, September 26, 1995. In the light of the replies filed in response to the notices issued by the revisional authority, the respondent requested the assessing authority to adjourn the proceedings relating to the assessment year 1997-98, but on December 1, 1998, the Sales Tax Officer passed an order withdrawing the exemption earlier granted and directed the assessee to pay the sales tax to the tune of Rs. 18.50 crores under the Act as well as the Central Act. It is stated that since para 1(C) of the notification dated January 30, 1996 published on February 6, 1996 prohibited by virtue of clause 5 thereof the assessee from charging tax on the sale of cement manufactured in the new unit and any collection of the sales tax would have exposed to penal consequences under section 35 of the Act, the assessee had not actually collected any sales tax at all and in spite of all these, it was being made to pay huge amount, which is an illegal demand on account of the arbitrary, illegal and mala fide nature of the action initiated by the authorities. Against the order of the Sales Tax Officer dated December 1, 1998, an appeal was filed before the Additional Excise and Taxation Commissioner, Himachal Pradesh. The assessing authority in the meantime issued a notice dated January 4, 1999 for the assessment year 1997-98 calling upon the assessee to pay sales tax in a sum of Rs. 18.50 crores under both the Act as well as Central Act, stipulating coercive action under section 14(8) of the Act, in default thereof. In spite of the representations made before the appellate authority, the assessee was directed to make an initial deposit of Rs. 1.50 crores before the appeal filed could be heard on merit. Appeals were filed before the Finance Commissioner against the orders passed by the appellate authority dated October 3, 1998 and October 6, 1998, which are said to be pending. Even in

Even of all these, the assessing authority issued another show cause notice dated February 9, 1999 calling upon the assessee to pay a sum of Rs. 5.50 crores excluding interest and penalty towards the liability of sales tax for the period from April, 1998 to December, 1998. In the meantime, the revisional authority has issued four more notices being Revision Nos. 7, 8, 9, 10 under the Act as well as Central Act for the years 1992-93 to 1995-96 alleging that the orders passed by the assessing authority for those periods are neither legal nor proper and calling upon the assessee to show cause as to why penalty for the assessment year from 1992-93 to 1995-96 equivalent to one and half time of the tax that would have been payable on purchase of materials should not be levied in view of the fact that the provisional registration certificate under the Act expired on June 30, 1995 and regular registration certificate was only obtained on August 11, 1995. On February 8, 1999, the revisional authority cancelled and annulled the exemption certificate issued in form STE-II with retrospective effect and held that the assessee-company was liable to pay tax under both the Central Act and the Act in

addition to its liability to pay the purchase tax under section 5-A of the State Act on the limestone extracted. The revisional authority was of the view that the respondents were not entitled to any exemption as they did not fulfil the requisite conditions. Additionally, it was held that there was no compliance with the statutory requirements which was a condition precedent for grant of benefit. That was treated to be an additional ground for holding that the respondent was not entitled to any benefit. Reference was made to certain defective "C forms" to highlight as to how the assessee had failed to comply with the requirements for entitlement of the benefits. Accordingly, the revisional authority directed fastening of additional tax liability. Apprehending that the appellate authority, which is only subordinate to the revisional authority is likely to follow the view expressed by the revisional authority and the remedy of appeal would be merely an empty formality in view of the order of the revisional authority, the writ petitions were filed. The High Court allowed the writ petitions by the impugned judgment and quashed the orders of the sales tax authorities; inter alia, holding as follows:

"So long as the petitioners satisfied the eligibility criteria prescribed in the Revised Incentive Rules, as amended from time to time, he would be entitled to the benefits and incentives extended under the Rules and the statutory notification is not a must or an essential pre-requisite for the petitioners to assert/enforce such rights. The statutory notifications issued under the relevant taxing enactments only go to ratify and accord statutory recognition also to what was originally planned and proclaimed as a policy decision and guidelines. Viewed thus, the petitioners would, in our view, be entitled to the benefit of the incentives from the date of commencement of commercial production on September 26, 1995. As held in State of Bihar v. Suprabhat Steel Ltd. [1999] 112 STC 258 (SC); (1991) 1 SCC 31, it would not be permissible for even the State Government to override or negate the incentives and benefits which any industrial unit would be otherwise entitled to under the Incentive Policy, proclaimed by the Government itself."

10. Additionally, it was held that the levy of purchase tax on

the royalty paid is not legally sustainable.

11.. The High Court held that the approach of the authorities was clearly erroneous, on a misreading of the various notifications and keeping out of consideration certain relevant materials. Particular reference was made to the Registration Certificate dated January 13, 1993, issued by the Empowered Committee. Taking note of the fact that the notifications were issued by promulgating rules, the High Court was of the view that they are to be considered in the background of section 42 of the Act. The emphasis on defects in "C" forms was held to be clearly without any basis, and the same was held to be totally insignificant for the purpose of denying benefits in terms of the policy of the State to encourage setting up of cement industries

12.. In ACC's case the High Court followed the view expressed in Gujarat Ambuja's case relating to levy of purchase tax on royalty paid. High Court's judgments are assailed in these appeals on various grounds.

13.. Firstly, it is submitted that the High Court should not have entertained the writ petitions under article 226 of the Constitution of India, 1950 (in short, "the Constitution") when alternative remedy was available under the Central Act and the State Sales Tax Act, if the respondents were aggrieved by the revisional orders. Several factual controversies were involved and the High Court was not justified in holding that no factual controversy was involved. Whether the exemptions claimed were available in the factual background needed factual adjudication and, therefore, the High Court should not have entertained the writ petition.

14.. Further submission of appellant-State is that benefits were not available to respondent No. 1-Company as the requisite conditions were not fulfilled. Firstly, it was not a new industrial unit registered with the empowered committee appointed in accordance with rule 24 between May 1, 1992 and March 31, 1995 and had not gone into the commercial production on or after May 1, 1992. It was also submitted that various provisions of the Act and the Central Act were not complied with, as would be evident from the fact that the requisite declaration forms were not submitted and/or forms submitted were defective. That being so, the High Court was not justified in interfering with the revisional orders passed. There was no evidence before the revisional authority that respondent No. 1-company was registered with the empowered committee on January 13, 1993. This did not form a part of the revisional record and obviously was not considered by the revisional authority. That being so, the High Court should not have taken the same into account. It was also pointed out that merely because certain defective forms were filed that cannot be taken as compliance with the statutory requirement of filing the declaration forms within the stipulated time. In any event, purchase tax on royalty had not been paid and, therefore, that also amounted to violation of the conditions stipulated.

15.. It is submitted that the High Court confused between Prestigious Units and Prestigious Cement Units. The question of declaring

the respondent-assessee as a Prestigious Cement Unit did not arise till it had started commercial production. The notifications clearly show that at different points of time either no benefit was granted to cement industries or such industry was entitled to only deferment of payment of sales tax and not exemption. The respondent-assessee had failed to show as to under what provision the rules referred to in the notifications were framed. According to learned counsel for the appellant the expression "rules" has been loosely used in the notifications and in the real sense the notifications contained policy decisions which as the notifications clearly indicated were not enforceable in any court of law having been granted at the discretion of the State Government. It was submitted that the defective declaration forms (form "C") clearly indicated that the respondent-assessee had not complied with the various Statutes, Rules and Notifications. The sine qua non for grant of benefits was not complied with. Therefore, the revisional authority was justified in holding that respondent-assessee was not entitled to any benefit.

16.. In response, learned counsel for the respondents submitted that the revisional authority had clearly acted without jurisdiction. There was really no factual dispute involved and in essence the challenge related to the question whether on a bare reading of the concerned notifications/Government orders the exemptions claimed by the writ petitioners were originally allowed. The competent authority had considered the relevant aspects and the benefits had been granted. They should not have been withdrawn by the revisional authority in the manner done. It was clearly indicated in the writ petitions as to why the available statutory remedies would have an exercise in futility. It was clearly mentioned and substantiated by materials as to why the writ petitioners had become victims of a political vendetta. The political parties and persons who had let loose a smear campaign against the writ petitioners were in power and the subordinate authorities would have been in no position to give justice to the writ petitioners contrary to their dictates. The authorities recorded conclusions which clearly show the bias and preconceived notions. The conclusions were pre-determined. In that background, the writ petitions were filed and were entertained. The High Court has elaborately dealt with every relevant aspect and it has not been shown as to how the High Court's judgments suffer from any infirmity. Further, this Court should not interfere since the High Court had entertained writ petitions indicating reasons why the writ petitions were entertained when alternative remedy was available.

17.. Stand of the respondents on the other issues was to the effect that the submissions of the appellants do not carry any weight and have been made overlooking the factual and legal position. The submissions completely overlook the essence of the notifications and are based on misreading them.

18.. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy,

convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

19.. Constitution Benches of this Court in K.S. Rashid and Son v. Income-tax Investigation Commission* AIR 1954 SC 207, Sangram Singh v. Election Tribunal, Kotah AIR 1955 SC 425, Union of India v. T.R. Varma AIR 1957 SC 882, State of U.P. v. Mohammad Nooh AIR 1958 SC 86 and K.S. Venkataraman and Co. (P.) Ltd. v. State of Madras† AIR 1966 SC 1089, held that article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

20.. Another Constitution Bench of this Court in State of Madhya Pradesh v. Bhailal Bhai‡ AIR 1964 SC 1006, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a civil court or to deny defence legitimately open in such actions. The power to

*See [1954] 25 ITR 167.
†See [1966] 17 STC 418; [1966] 60 ITR 112.
‡See [1964] 15 STC 450.

give relief under article 226 of the Constitution is a discretionary power. Similar view has been re-iterated in N.T. Veluswami Thevar v. G. Raja Nainar AIR 1959 SC 422, Municipal Council, Khurai v. Kamal Kumar AIR 1965 SC 1321, Siliguri Municipality v. Amalendu Das AIR 1984 SC 653, S.T. Muthusami v. K. Natarajan AIR 1988 SC 616, Rajasthan State Road Transport Corporation v. Krishna Kant AIR 1995 SC 1715, Kerala State Electricity Board v. Kurien E. Kalathil AIR 2000 SC 2573, A. Venkatasubbiah Naidu v. S. Chellappan (2000) 7 SCC 695, L.L. Sudhakar Reddy v. State of A.P. (2001) 6 SCC 634, Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra (2001) 8 SCC 509, Pratap Singh v. State of Haryana (2002) 7 SCC 484 and GKN Driveshafts (India) Ltd. v. Income-tax Officer* (2003) 1 SCC 72.

21.. In Harbanslal Sahnia v. Indian Oil Corporation Ltd. (2003) 2 SCC 107, this Court held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that

the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

22. In G. Veerappa Pillai v. Raman and Raman Ltd. AIR 1952 SC 192, Assistant Collector of Central Excise v. Dunlop India Ltd. AIR 1985 SC 330, Ramendra Kishore Biswas v. State of Tripura AIR 1999 SC 294, Shivgonda Anna Patil v. State of Maharashtra AIR 1999 SC 2281, C.A. Abraham v. Income-tax Officer, Kottayam† AIR 1961 SC 609, Titaghur Paper Mills Co. Ltd. v. State of Orissa‡ AIR 1983 SC 603, H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopinath & Sons** (1992) Supp 2 SCC 312, Whirlpool Corporation v. Registrar of Trade Marks AIR 1999 SC 22, Tin Plate Co. of India Ltd. v. State of Bihar†† AIR 1999 SC 74, Sheela Devi v. Jaspal Singh (1999) 1 SCC 209 and Punjab National Bank v. O.C. Krishnan (2001) 6 SCC 569, this Court held that where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedies before resorting to writ jurisdiction.

23. If, as was noted in Ram and Shyam Co. v. State of Haryana AIR 1985 SC 1147 the appeal is from "Caeser to Caeser's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indi-

*See 2003] 259 ITR 19.
†See [1961] 41 ITR 425.
‡See [1983] 53 STC 315.
**See [1990] 77 STC 1.
††See [1990] 112 STC 543.

cated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First Income-tax Officer, Salem v. Short Brothers (P.) Ltd.* [1966] 3 SCR 84 and State of U.P. v. Indian Hume Pipe Co. Ltd.† (1977) 2 SCC 724. That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well recognised exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an

abuse of process of law the High Court in an appropriate case can entertain a writ petition.

24.. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income-tax Officer, Bareilly‡ AIR 1971 SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of

*See [1966] 60 ITR 83.
†See [1977] 39 STC 355.
‡See [1970] 78 ITR 26.

statutory remedies, unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

25.. At this juncture, it would be appropriate to take note of the few expressions in Regin v. Hillingdon London Borough Council [1974] 1 QB 720 which seems to bring out well the position. Lord Widgery, C.J., stated in this case:

"It has always been a principle that certiorari will go only where there is no other equally effective and convenient remedy.....

The statutory system of appeals is more effective and more convenient than application for certiorari and the principal reason why it may prove itself more convenient and more effective is that an appeal to (say) the Secretary of State can be disposed of at one hearing whether the issue between them is a matter of law or fact or policy or opinion or a combination of some or all of these..... whereas of course an appeal for certiorari is limited to cases where the issue is a matter of law and then only if is a matter of law appearing on the face of the order.

An application for certiorari has however this advantage that it is speedier and cheaper than the other methods and in a proper case therefore it may well be right to allow it to be used.....I would, however, define a proper case as being one where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or in consequence of an error of law."

26.. After all the above discussion, the following observations of Roskil L.J., in Hanson v. Church Commissioner for England [1978] 1 QB 823 may not be welcomed but it should not be forgotten also:

"There are a number of shoals and very little safe water in the unchartered seas which divide the line between prerogative orders and statutory appeals, and I do not propose to plunge into those seas ....."

27. Therefore, the plea that the High Court should not have entertained the writ petition is without any merit and deserves rejection

28. Though learned counsel for the appellant-State urged that certificate showing that respondent No. 1-company was registered with the Empowered Committee on January 13, 1993 should not have been considered on the ground that revisional authority had not dealt with the same while dealing with the case of respondent-company, it is not disputed that the registration was within the knowledge of the appellants. In fact the certificate was a part of the record before the High Court. The registration with the Empowered Committee on January 13, 1993 therefore establishes that the respondent No. 1-company was registered with the Empowered Committee within the period prescribed in the incentive notification. The appellant-State issued a notification through the Department of Industries in the name of the Governor on March 27, 1991. The notification notified rules for grant of revised incentives to industrial units and the rules were to be operative from April 1, 1991 which was referred to as the appointed date. Under the said notification new industrial units were eligible for grant of incentives as detailed in the notification. According to this notification new industrial unit means "any industrial unit located in the State of Himachal Pradesh which commences production on or after the appointed date". The new industrial units were to be granted various benefits including central sales tax concession. But no concession under the State Act was available to a cement unit as cement was in the negative list mentioned in the annexure III to the notification. By notification dated July 31, 1992 the earlier notification dated March 27, 1991 was amended. In other words, the rules contained in the notification were amended. By the subsequent notification, certain categories of units were taken out of the negative list. Cement was one of such units. Resultantly, in terms of the notification dated July 31, 1992 the cement units became eligible for exemption as provided in various incentives notifications. A significant change was also made by the notification to the effect that the concept of "Prestigious Cement Unit" was introduced. Subject to fulfilment of certain conditions a prestigious unit was eligible for both sales tax exemption and deferment. The conditions are as follows:

(i) The unit must be registered with the Empowered Committee as a new industrial unit between May 1, 1992 and March 31, 1993.

(ii) The new industrial unit must go into commercial production on or after 1st May, 1992.

(iii) The said unit must have a fixed capital investment of Rs. 50 crores.

(iv) A new industrial unit must employ at least 200 persons on

29. Rule 24 (of 31st July, 1992 Notification) spelt out the constitution and function of the Empowered Committee. It also spelt out the procedure for setting up of a prestigious unit. Under rule 24.4 applications for setting up of a prestigious unit were to be made to the Director of Industries who was then to put those for consideration of the Committee. One of the Members of the Committee was the Excise and Taxation Commissioner. The Member-Secretary of the Committee was the Secretary of Industries Department. Finality was attached to the decision of the Empowered Committee in terms of rule 24. The Empowered Committee was to stipulate the commencement date of the unit. To put it differently, it was open to the Empowered Committee to register a unit prior to its going into the commercial production. This position is abundantly clear from the stipulation in the rule itself that the Empowered Committee in certain cases could extend the outer-limit of the period for going into commercial production, where 80 per cent of the project had been completed. As noted above, on January 13, 1993 the proposed unit of respondent No. 1-company for the manufacture of Portland cement was registered with the Empowered Committee subject to certain conditions. It was stipulated that the unit was to commence production latest by January, 1995. Changes were introduced by the notification dated December 1, 1994 vis-a-vis earlier Notification dated March 27, 1991 and July 31, 1992. By this notification, the concept of "prestigious cement unit" was introduced. A unit to be eligible as a "prestigious cement unit" was to fulfil the following conditions:

(i) Must be a new industrial unit registered with the Empowered Committee appointed in accordance with rule 24 between May 1, 1992 and March 31, 1995.

(ii) The new industrial unit must go into commercial production on or after May 1, 1992.

(iii) The new unit must have a fixed capital investment of Rs. 50 crores

(iv) The new unit must employ at least 200 persons on a regular basis

30. After coming into force of the new definition of "Prestigious Cement Industrial Unit" the Director of Industries extended the date for commencement of commercial production up to June 30, 1995 and subsequently up to September 30, 1995.

31. Stand of the appellant-State is that even if there was a registration with the Empowered Committee on January 13, 1993, the same was of no consequence after the new definition of "Prestigious Cement Industrial Unit" was introduced. We find no substance in this submission of learned counsel because of several reasons. Firstly, there was nothing in the Notification dated December 1, 1994 which required that those units which had obtained registration between May 1, 1992 and December 1, 1994 were required once again to seek registration as a "prestigious cement unit". Had it been so

there was no question of extending the validity of the registration certificate dated January 13, 1993 after promulgation of Notification dated December 1, 1994. In fact the final extension granted was up to September 30, 1995 and there is no dispute that respondent No. 1-company commenced its production on September 26, 1995. Para 27 of the Notification dated December 1, 1994 provided that prestigious cement unit was entitled to deferment of sales tax as well as exemption from payment of the electricity duty. On December 31, 1994 the State Government issued a notification under section 42 of the Act which granted sales tax exemption for pioneer industries from the date of commercial production. On July 6, 1995 the Governor of Himachal Pradesh issued another notification amending the revised rules of March 27, 1991 regarding grant of incentives to industrial units. By this notification incentives of sales tax deferment/exemption were restored to cement units. On January 30, 1996 exemption notifications under section 8(5) of the Central Act and section 42(1) of the Act were issued by the Governor of Himachal Pradesh. In this notification, the respondent No. 1-company was expressly named as a Prestigious Cement Industrial Unit that would be eligible for the benefit. This notification also indicated that the respondent No. 1-company was eligible for sales tax exemption for a period of 9 years. It is to be noted that the respondent No. 1-company was registered as a dealer on August 11, 1995 under the Act and a certificate in form STE-III had been issued by the Director of Industries. When respondent No. 1 applied in form STE-I, exemption certificate in form STE-II had been granted by the prescribed authority. The denial of benefit contemplated under clause (3) of the notification related to a finding about evasion of tax either under the Act or the Central Act.

32. On January 28, 1995 the Director of Industries extended the date of commencement of commercial production till June 30, 1995 keeping in view the progress of the plant. The same was further extended up to September 30, 1995 keeping in view the progress of the plant by order dated June 30, 1995. By Notification dated July 6, 1995 incentives of sales tax deferment/exemption were restored to cement units. There is no dispute that the respondent-company's commercial production started with effect from September 26, 1995 and in fact, the Director of Industries by his certificate dated January 24, 1996 confirmed this position. On September 26, 1995 respondent-company brought to the notice of the concerned department these facts and claimed incentives under the exemption notification indicating that commercial production had started. The Empowered Committee confirmed grant of Permanent Registration Certification (Declaration) to the respondent-assessee. On January 30, 1996 the exemption notification was issued. The said notification has also significance for the present dispute. In the notification it was clearly stated that the respondent-company was exempted from payment of sales tax. It was expressly named as a "Prestigious Cement Industrial Unit". It was classified as a category "B" industry entitled to sales tax exemption for 9 years. The notification was published on February 6, 1996. On February 2, 1996

declaration was issued by the Industry's department confirming respondent's eligibility for several incentives and more particularly sales tax concessions. By the certificate No. STE(III) the Director of Industries certified that the respondent-company fulfilled all conditions namely registration by Empowered Committee, employment of person belonging to the State and capital investment. On March 2, 1996 respondent-company applied for the necessary benefit in form STE(I) and on June 11, 1996 exemption certificate was issued in form STE(II).

33.. The respondent No. 1-company was registered with the Empowered Committee and was also declared as a unit which is eligible for incentive of sales tax concession as available to a prestigious cement unit under the revised rules regarding grant of incentives to industrial units. The definition of prestigious cement industrial unit as introduced on December 1, 1994 was not intended to provide that there has to be registration either as a prestigious unit or as a prestigious cement industrial unit. It only required registration as a new industrial unit with the Empowered Committee. It is significant to note that the pre-conditions for grant of prestigious unit status and prestigious cement unit status were materially identical.

34.. One fallacy in the argument of the State is clearly revealed from the fact that the Notification dated December 1, 1994 contemplates registration from May 1, 1992. To put it differently, registration with the Empowered Committee prior to December 1, 1994 was permissible in terms of the notification and that is why January 13, 1993 registration cannot be said to have lost its currency after the promulgation of December 1, 1994 Notification. There is no dispute that respondent No. 1-company was registered as a new industrial unit within the stipulated dates. If the contention of the State is accepted, it would mean that the extension given by the Secretary of Industries who was the Member Secretary of the Empowered Committee extending the date of commercial production after considering the progress of the units was in derogation of the prescriptions. That is not the case of the appellant-State. Further, it overlooks the powers available under rule 24.4 of the notification dated July 31, 1992.

35.. Another significant aspect which needs to be noted at this juncture is that in the Notification dated January 13, 1993 respondent No. 1-company was clearly and specifically named as one of the units to which the exemption from payment of sales tax for a period of 9 years was available. That being so, there is no question of the appellant-State subsequently raising a question that the respondent No. 1-company was not registered between the specified dates. A plea was taken that if that was the position there was no necessity for the respondent No. 1-company to apply and obtain another certificate on February 2, 1996, if according to it there was a valid registration dated January 13, 1993. The certificate dated February 2, 1996 is a declaration issued by the Empowered Committee. It declared, confirmed and re-stated the status of respondent No. 1-company. It did not create any such status for the first time.

36.. In the January 30, 1996 Notification two distinct expressions have been used; (i) registration by the Empowered Committee between the two specified dates and (ii) declaration as a prestigious

cement company by the said date as one of the alternate criteria in addition to the registration. The position is clear from a reading of January 30, 1996 Notification which reads as follows:

"Sale of goods manufactured by certain industries—Exemption—Amendment (Himachal Pradesh)

Notification No. EXN-C(9) 2/90-IV, dated 30th January, 1996

In exercise of the powers conferred by sub-section (1) of section 42 of the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968), the Governor of Himachal Pradesh is pleased to make the following further amendments in this Department's Notification No. EXN-C(9)2/90 dated December 31, 1994 published in the Rajpatra, Himachal Pradesh (Extraordinary) on December 31, 1994, as amended from time to time (hereinafter called the 'said notification') with immediate effect

AMENDMENT-1. After the existing para 1-B of the said notification the following new para '1-C' shall be inserted namely:—

'1-C. (1) The Governor of Himachal Pradesh in exercise of the powers conferred by sub-section (1) of section 42 of the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968) is pleased to order exemption from tax, subject to their being eligible as per the terms of this para to the following other industries from the payment of tax leviable on the sale of cement manufactured by such "other industries" as specified in the Table given below and subject to the conditions specified below in sub-para (2):

Serial Number	Name of the industry	Category of industrial block in which located	Total time-limit within which concession of exemption will be available
(1)	(2)	(3)	(4)
1.	M/s. Gujarat Ambuja Cements Ltd., Village Suli, P.O. Darlaghat, Tehsil Arki, District Solan (H.P.)	"B"	One hundred eight months (9 years)
2.	M/s. The Associated Cement Companies Ltd. P.O. Barmana, District Bilaspur (H.P.)	"B"	One hundred eight months (9 years)

(2) The concession of exemption from payment of tax under this Act, shall be admissible to "other industries" only if—

(i) it is a prestigious cement industrial unit;

(ii) it has been registered as a dealer under the Himachal Pradesh General Sales Tax Act, 1968, for manufacture of cement for sale in the "new cement industrial unit";

(iii) it has obtained a certificate in form S.T.E.-III from the Director of Industries, Himachal Pradesh and has furnished the same to the prescribed authority for the grant of exemption certificate in form S.T.E.-III;

(iv) it has been granted an exemption certificate in form S.T.E.-II by the prescribed authority;

(v) it (registered dealer) complies with the provisions of: (a) the Himachal Pradesh General Sales Tax Act, 1968, (b) the Central Sales Tax Act, 1956 and (c) the Rules, notifications and orders made and issued under these Acts;

(vi) the exemption certificate continues to remain operative and it has not been withdrawn or cancelled by the prescribed authority or is not annulled or quashed in any appellate, revisional or other proceedings.

Provided that the exemption contained in sub-para (1) to M/s. The Associated Cement Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) shall be granted by the prescribed authority only if, in addition to the preceding conditions,—

(a) the payment of tax under the Himachal Pradesh General Sales Tax Act, 1968 and the Central Sales Tax Act, 1956, in respect

of the old component of the M/s. The Associated Cement Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) is actually made even during each financial year of the period of exemption in respect of the new component of this unit, established as a result of expansions on the quantity respectively of 5,51,084 metric tonnes and 3,71,028 metric tonnes sold during the year 1991-92; and

(b) the level of manufacture of 9,22,692 metric tonnes of cement in the old component of M/s. Associated Companies Limited, Barmana, District Bilaspur (Himachal Pradesh) is also maintained unchanged throughout each financial year during the period of exemption in respect of the new component of this unit established as a result of expansion.

(3) Notwithstanding anything contained in sub-paras (1) and (2), no exemption shall be granted by the prescribed authority to such other industry—

(i) if it is found that the evasion of tax under the Himachal Pradesh General Sales Tax Act, 1968 or the Central Sales Tax Act, 1956 has been committed by the entrepreneur (registered dealer);

(ii) in respect of the sale of finished cement, which has been procured or acquired by it for the sale in Himachal Pradesh; and

(iii) in respect of the sale of cement which has not been included and duly returned in the return filed under section 12(3) of the Himachal Pradesh General Sales Tax Act, 1968

(4) The provisions contained in paras 2, 3, 8, 13, 16, 17 and 14 of the Himachal Pradesh General Sales Tax (Deferred Payment of Tax) Scheme, 1992 notified vide Government Notification No. 1-1/93-E&T-II dated September 25, 1992* published in Rajpatra Himachal Pradesh (Extraordinary) on October 1, 1992 shall apply mutatis mutandis in relation to (i) mode of availing of benefit of exemption and issue of exemption certificate, (ii) renewal of exemption certificate, (iii) cancellation of exemption certificate in form STE-II, (iv) filing of returns, assessment, etc., (v) registers to be maintained, (vi) condonation of delay, (vii) other powers of the prescribed authority, and (viii) overriding effect of this notification.

(5) The exemption is subject to the further condition that the entrepreneur (registered dealer) shall not charge sales tax on the sale of cement manufactured in the new cement industrial unit during the period of exemption.

*See [1993] 90 STC Statutes 16

Explanation.—For the purpose of para (1-C) of this notification,—

(a) "other industries" means "prestigious cement industrial units";

(b) "prestigious cement industrial unit" means a new cement industrial unit which has fixed capital investment of not less than rupees fifty crores, comes into production after the 1st day of May, 1992, is registered by the Empowered Committee between the 1st day of May, 1992 and the 31st day of March, 1995 and employs on permanent basis not more than two hundred persons; and

(i) is based on local raw material, or

(ii) carries out value addition of fifty percentum or more, in its manufactured products, or

(iii) undertakes an export commitment of 50 per cent or more of its production, or

(iv) is declared to be prestigious cement unit by the Empowered Committee headed by the Secretary (Industries) to the Government of Himachal Pradesh;

and also includes an existing industrial unit which fulfills the above criteria for "prestigious cement unit" exclusively by virtue of the component of "expansion" or "diversification" or "modernisation" as the case may be;

(c) the expressions "diversification", "expansion", "modernisation", "Empowered Committee" and "prescribed authority" shall have the same meanings assigned to them in clauses (ii), (iv), (v) and (xv) respectively of sub-para (1) of para 2 of the Himachal Pradesh General Sales Tax (Deferred Payment of Tax) Scheme, 1992*.

(i) "fixed capital investment" means capital investment made in plant, building, machinery and plant as verified by the prescribed authority, and

(j) forms "STE-I", "STE-II" and "STE-III" mean the forms as appended to this notification; and

(k) unless there is anything repugnant in the subject or context, all words and expressions used herein shall have the meaning assigned to them under the Himachal Pradesh General Sales Tax Act, 1968."

37. Judged from the above background, the appellant's plea about non-entitlement of the respondent No. 1-company of the sales

*See [1993] 90 STC Statutes 16.

tax benefits and exemptions is clearly mis-conceived. The High Court's judgment does not suffer from any infirmity to warrant interference.

38. It may be noted here that there are two additional factors which also made the revisional order indefensible. Firstly, assessments were made for the assessment years 1995-96 and 1996-97 fixing the date of entitlement first to be January 31, 1996 and subsequently from February 6, 1996. The respondent No. 1-company had questioned the correctness of the fixation of the dates by filing appeals which came to be dismissed. In other words, the assessment orders merged with the first appellate orders, so far as the date of entitlement is concerned. It may be noted at this juncture that the respondent No. 1-company wanted the exemption from an anterior date. In any event, the fixation of the date of entitlement with effect from February 6, 1996 became final by the first appellate orders. The revisional authority did not take note of the said appellate orders. In that view of the matter, the assessment orders which had got merged with the first appellate orders could not have been revised. Significantly, by the revisional orders the revisional authority set aside only the assessment orders, though according to the show cause notices the respondent No. 1 was required to show cause as to why the exemption notification shall not be recalled. In the operative part of the order, only the assessment orders have been quashed. The final certificate was issued to the respondent No. 1-company on June 1, 1996 but was made effective from August 11, 1995. Undisputedly, the provisional registration certificate under the Act was originally valid up to February 14, 1994 and was re-validated up to June 30, 1995. On June 17, 1995 an application was made for its renewal up to December 31, 1995 and the requisite fee had been deposited and the renewal was granted. Though much stress was laid on the absence of a certificate of provisional registration up to the date of commercial production, it has not been disputed that an application for extension of the validity period was filed on June 17, 1995. A certificate of registration as a dealer was issued on January 1, 1996 same was made effective from August 11, 1995.

39. A plea was made about absence of the validity of provisional certificate of registration for two months. That actually loses

significance because the application for extension of period of validation had not been turned down at any subsequent point of time.

40. It was urged on behalf of the appellant-State that declaration forms under the Central Act were not filed within the time and/or were defective. That does not in reality amount to non-compliance of a statutory provision. The respondent No. 1-company was claiming exemption and, therefore, had not filed the declaration forms. Some of the forms which were filed were treated to be defective. Undisputedly, before the revisional authority a prayer was made for grant of opportunity to rectify the defects, if any. That was turned down. It is to be noted that under rule 12(7) of the Central Sales Tax (Registration and Turnover) Rules, 1957 (in short, "the Registration Rules") the declaration form can be filed at a subsequent point of time and not necessarily along with returns. On an application being made before the assessing officer the extension can be granted. The object of the Rule is to ensure that the assessee is not denied a benefit which is available to it under law on a technical plea. The assessing officer is empowered to grant time. That means that the provisions requiring filing of declaration forms along with the return is a directory provision and not a mandatory provision. In a given case even the declaration forms can be filed before the appellate authority as an appeal is continuation of the assessment proceedings. In a given case, if the appellate authority is satisfied that assessee was prevented by reasonable and sufficient cause which disenabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction. In the instant case, respondent No. 1-company made a specific request before the revisional authority which was turned down. Therefore, the question of any non-compliance with the relevant statutes does not arise. It was noted by this Court in Sahney Steel and Press Works Ltd. v. Commercial Tax Officer* (1985) 4 SCC 173 that even in a given case, an assessee can be given an opportunity to collect declaration forms and furnish them to the assessing authority if the challenge of the assessee to taxability of a particular transaction is turned down.

41. Respondent No. 1-company's stand was that it was granted exemption from payment of sales tax and, therefore, there was no requirement of furnishing any "C form" for certain periods relating to which there was a doubt about availability of the concession, the declaration forms were filed. Therefore, the assessing officer shall grant opportunity to the respondent No. 1-company to cure the defects, if any in the declaration forms.

42. It was urged by learned counsel for the appellant-State that revision notices Nos. 7 to 10 were erroneously quashed by the High Court. Learned counsel for the respondents submitted that in the writ petition filed by it there was no prayer for quashing revision notices Nos. 7 to 10. It is stated that the High Court had not clearly

*See [1985] 60 STC 301.

quashed the said revision notices and the appellant-State and its functionaries have not pursued the revision notices. Be that as it may, the respondent No. 1-company is granted two months' time to respond to the said notices and indicate its stand. The revisional authority shall consider desirability of continuing the revision notices after considering the response of the respondents, if any, filed. The basic issue involved in these notices is to the effect of absence of provisional registration certificate after August 11, 1995 up to September 25, 1995. As noted above, respondent No. 1-company's stand is that it had applied for extension of the validity period up to December 31, 1995 and absence of any order on the same has not been disputed. Let the concerned authority deal with the application within a period of 6 weeks after giving notice to the respondent No. 1-company. The revisional authority shall take note of the order to be passed thereon.

43.. The question relating to liability to pay purchase tax on royalty paid is common to both Gujarat Ambuja and ACC. According to learned counsel for the appellant-State, the High Court erroneously held that royalty paid did not attract levy of purchase tax. The foundation for the argument is a decision of this Court in State of M.P. v. Orient Paper Mills Ltd.* (1977) 2 SCC 77. In that case it was held that royalty paid under the lease was the sale price. There is a contrast between sale and purchase. The definition of purchase is wider. It involves the acquisition and, therefore, nothing but a transfer. Reference is also made to several provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (in short, "Minerals Act, 1957") and it was submitted that position is different after amendment in 1972. In fact, according to the appellant what is being taxed is the consideration as minerals are being removed.

44.. According to learned counsel for the respondents, the plea is untenable in view of the decision of this Court in State of Orissa v. Titaghur Paper Mills Co. Ltd.† (1985) Supp SCC 280.

45.. In State of Orissa v. Titaghur Paper Mills Co. Ltd.† (1985) Supp SCC 280, it was, inter alia, observed by this Court as follows:

"102. Royalty is not a term used in legal parlance for the price of goods sold. 'Royalty' is defined in Jowitt's Dictionary of English Law, Fifth Edition, Vol. 2, page 1595, as follows:

Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use

*See [1977] 40 STC 603.
†See [1985] 60 STC 213

made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right.

Royalty also means a payment which is made to an author or composer by a publisher in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent.

We are not concerned with the second meaning of the word 'royalty' given in Jowitt. Unlike the timber contracts, the bamboo contract is not an agreement to sell bamboos standing in the contract areas with an accessory licence to enter upon such areas for the purpose of felling and removing the bamboos nor is it, unlike the timber contracts, in respect of a particular felling season only. It is an agreement for a long period extending to fourteen years, thirteen years and eleven years with respect to different contract areas with an option to the respondent-company to renew the contract for a further term of twelve years and it embraces not only bamboos which are in existence at the date of the contract but also bamboos which are to grow and come into existence thereafter. The payment of royalty under the bamboo contract has no relation to the actual quantity of bamboos cut and removed. Further, the respondent-company is bound to pay a minimum royalty and the amount of royalty to be paid by it is always to be in excess of the royalty due on the bamboos cut in the contract areas.

103.. We may pause here to note what the Judicial Committee of the Privy Council had to say in the case of Raja Bahadur Kamakshya Narain Singh of Ramgarh v. Commissioner of Income-tax, Bihar and Orissa [1943] 11 ITR 513 (PC) about the payment of minimum royalty under a coal mining lease. The question in that case was whether the annual amounts payable by way of minimum royalty to the lessor were in his hands capital receipt or revenue receipt. The Judicial Committee held that it was an income flowing from the covenant in the lease. While discussing this question, the Judicial Committee said (at pages 522-3):

'These are periodical payments, to be made by the lessee under his covenants in consideration of the benefits which he is granted by the lessor. What these benefits may be is shown by the extract from the lease quoted above, which illustrates how inadequate and fallacious it is to envisage the royalties as merely the price of the actual tons of coal. The tonnage royalty is indeed only payable when the coal or coke is gotten and dispatched, but that is merely the last stage. As preliminary and ancillary to that culminating act, liberties are granted to enter on the land and search; to dig and sink pits, to erect engines and machinery, coke ovens, furnaces and form railways and roads. All these and the like liberties show how fallacious it is to treat the lease as merely one for the acquisition of a certain number of tons of coal, or the agreed item of royalty as merely the price of each ton of coal.'

Though the case before the Judicial Committee was of a lease of a coal mine and we have before us the case of a grant for the purpose of felling, cutting and removing bamboos with various other rights and licences ancillary thereto, the above observations of the Judicial Committee are very pertinent and apposite to what we have to decide.

.....

120.. It is true that the nomenclature and description given to a contract is not determinative of the real nature of the document or

of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the document and all the rights and results flowing therefrom and not by picking and choosing certain clauses and the ultimate effect or result as the court did in the Orient Paper Mills' case*.

.....

127.. Conclusions.—To summarize our conclusions.

.....

(9) The dictionary meaning of a word cannot be looked at where that word has been statutorily defined or judicially interpreted but where there is no such definition or interpretation, the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, bearing in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word, and the court has, therefore, to select the particular meaning which is relevant to the context in which it has to interpret that word.

.....

(16) Being a benefit to arise out of land, any attempt on the part of the State Government to tax the amounts payable under the bamboo contract would be not only ultra vires the Orissa Act but also unconstitutional as being beyond the State's taxing power under entry 54 in List II in the Seventh Schedule to the Constitution of India.

*See [1977] 40 STC 603 (SC); [1977] 2 SCR 140.

(17) The case of Firm Chhotabhai Jethabai Patel & Co. v. State of M.P. [1953] SCR 476 is not good law and has been overruled by decisions of larger Benches of this Court as pointed out by this Court in State of Madhya Pradesh v. Yakinuddin AIR 1962 SC 1915*.

(18) The case of State of Madhya Pradesh v. Orient Paper Mills Ltd.† (1977) 2 SCC 77 is also not good law as that decision was given per incuriam and laid down principles of interpretation which are wrong in law."

46.. In Cooch Behar Contractors' Association v. State of West Bengal‡ (1986) 10 SCC 380, a two-Judge Bench of this Court followed Orient Paper Mills Ltd. case† (1977) 2 SCC 77, and held that in view of the decision of this Court in Orient Paper Mills Ltd. case† (1977) 2 SCC 77, payment of royalty amounts to payment of price for the goods obtained from the Government departments and used in the works contract. Unfortunately, the subsequent judgment of a larger Bench in Titaghur Paper Mills case** does not appear to have been cited. That being so, this decision does not lay down the correct position and is overruled.

47.. "Royalty" is not a term used in legal parlance for the price

of the goods sold. It is a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee as held in Titaghur Paper Mills Co. Ltd. case**

48. In its primary and natural sense "royalty" in the legal world, is known as the equivalent or translation of "jura regalia" or "jura regni". Royal rights and prerogatives of a sovereign are covered thereunder. In its secondary sense, the word "royalty" would signify as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. [See Inderjeet Singh Sial v. Karam Chand Thapar (1995) 6 SCC 166]

49. "Royalty" is not a tax. Simply because the royalty is levied by reference to the quantity of the minerals produced and the impugned cess too is quantified by taking into consideration the same quantity of the mineral produced, the latter does not become royalty. The former is the rent of the land on which the mine is situated or the price of the privilege of winning the minerals from the land parted by the Government in favour of the mining lessee. The cess is a levy on mineral rights with impact on the land and quantified by reference to the quantum of mineral produced. The distinction,

*See [1963] 3 SCR 13.
†See [1977] 40 STC 603.
‡See [1996] 103 STC 477.
**See [1985] 60 STC 213 (SC).

though fine, yet exists and is perceptible. [See State of West Bengal v. Kesoram Industries Ltd.* (2004) 1 JT SC 375.

50. Though section 9 refers to "mineral removed" it does not mean that the royalty is paid on removal. It is point of payability. Royalty in the context of the agreement is an alternate to dead rent. Section 9 speaks of rates of royalty. It is nothing but measure of levy. The charging of dead rent and royalty is under different situations. It is shifting of the measure. Both "dead rent" and "royalty" are returns to the lessor. The stand of appellant that under section 9 of the Minerals Act royalty is a payment in respect of any mineral removed or consumed or that royalty is a money consideration for transfer of property is clearly untenable in view of the analysis made above

51. A mining lease is an interest in immovable property. The extraction and removal of minerals is essentially an extension of the enjoyment of immovable property. As noted in Titaghur Paper Mills' case† the right conferred by the lease deed to extract and remove the minerals is a profit a prendre.

52. It will be useful to know the meaning of the expressions "dead rent" and "royalty" and their connotation. Wharton's Law Lexicon, 14th Edition at page 300, defines "dead rent" as:

Dead Rent.—A rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not.

53. The definition of "dead rent" given in Black's Law Dictionary, 5th Edition, at page 359, is as follows:

Dead Rent—In English Law, a rent payable on a mining lease in addition to a royalty, so called because it is payable although the mine may not be worked.

54. Jowitt's Dictionary of English Law, 2nd Edition, at page 555, defined "dead rent" as:

Dead Rent, a term sometemes used in mining leases in contradistinction to a royalty, to denote a fixed rent to be paid whether the mine is productive or not. See Rent.

55. The same dictionary states under the heading "Rent", at page 1544

*See [2004] 2 RC 298
†See [1985] 60 STC 213; (1985) Supp SCC 280.

When a mine, quarry, brick-works, or similar property is leased, the lessor usually reserves not only a fixed yearly rent but also a royalty or gateage rent, consisting of royalties (q.v.) varying with the quantity of minerals, bricks, etc., produced during each year. In this case the fixed rent is called a dead rent

56. "Royalty" is defined in Jowitt's Dictionary of English Law, 2nd Edition, at page 1595, inter alia, as:

Royalty, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee. It is usually a payment of money, but may be a payment in kind, that is, of part of the produce of the exercise of the right. See Rent.

57. "Royalty" is defined in Wharton's Law Lexicon, 14th Edition, at page 893, as:

"Royalty, payment to a patentee by agreement on every article made according to his patent, or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

58. The definition of "royalty" given in Black's Law Dictionary, 5th Edition, at page 1195, is as follows:

"Royalty. Compensation for the use of property, usually copyrighted material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspect, it is share of profit reserved by owner for permitting another the use of

property ....."

In mining and oil operations, a share of the product or profit paid to the owner of the property....."

59. In M.R.S. Murthy v. Collector of Chittoor AIR 1965 SC 177 the Court said that "royalty" normally connotes the payment made for the materials or minerals won from the land.

60.. In Halsbury's Laws of England, 4th Edition in the volume which deals with "Mines, Minerals and Quarries", namely volume 31, it is stated in paragraph 224 as follows:

"224. Rents and royalties. An agreement for a lease usually contains stipulations as to the dead rents and other rent and royalties to be reserved by, and the covenants and provisions to be inserted in, the lease....."

61.. The topics same of dead rent and royalties are dealt with in Halsbury's Laws of England in the same volume under the sub-heading "Consideration", the main heading being "Property demised; Consideration". Paragraph 235 deals with "dead rent" and paragraph 236 with "royalties". The relevant passages are as follows:

"235. Dead rent. It is usual in mining lease to reserve both a fixed annual rent (otherwise known as a 'dead rent', 'minimum rent' or 'certain rent') and royalties varying with the amount of minerals worked. The object of the fixed rent is to ensure that the lessee will work the mine; but it is sometimes ineffective for that purpose. Another function of the fixed rent is to ensure a definite minimum income to the lessor in respect of the demise.

If a fixed rent is reserved, it is payable until the expiration of the term even though the mine is not worked, or is exhausted during the currency of the term, or is not worth working, or is difficult or unprofitable to work owing to faults or accidents, or even if the demised seam proves to be non-existent.

236.. Royalties. A royalty, in the sense in which the word is used in connection with mining leases, is a payment to the lessor proportionate to the amount of the demised mineral worked within a specific period."

62.. In paragraph 238 of the same volume of Halsbury's Laws of England it is stated:

"238. Covenant to pay rent and royalties. Nearly every mining lease contains a covenant by the lessee for payment of the specified rent and royalties."

63.. Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1882, contains the definitions of the terms "lease", "lessor", "lessee", "pre-

mium" and "rent" and is as follows:

"105. Lease defined—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms

Lessor, lessee, premium and rent defined—The transferor is called the lessor, the transferee is called the lessee, the price is called

the premium, and the money, share, service or other thing to be so rendered is called the rent."

64. The decision of this Court in D.K. Trivedi & Sons v. State of Gujarat (1986) Supp SCC 20 is a complete answer to the plea raised by learned counsel for the appellant-State. It was, inter alia, held in that case as follows: (The relevant paras are quoted).

"39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called 'royalty'. It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called 'dead rent'.

'Dead rent' is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed. Since dead rent and royalty are both a return to the lessor in respect of the area leased looked at from one point of view dead rent can be described as the minimum guaranteed amount of royalty payable to the lessor but calculated on the basis of the area leased and not on the quantity of minerals extracted or removed. In fact, clause (ix) of rule 3 of the Rajasthan Minor Mineral Concession Rules, 1977, defines 'dead rent' as meaning 'the minimum guaranteed amount of royalty per year payable as per Rules or agreement under a mining lease'. Stipulations providing for the lessee's liability to pay surface rent, dead rent and royalty to the lessor are the usual covenants to be found in a mining lease.

.....

54. As pointed out earlier, since dead rent is the minimum guaranteed amount of royalty and partakes of the nature of royalty, what, therefore, applies to royalty must necessarily apply or should

be made applicable to dead rent also. The proviso to section 9(3) prohibits the Central Government from enhancing the rate of royalty in respect of any mineral other than a minor mineral more than once during any period of four years. The proviso to section 9-A(2) also prohibits the Central Government from enhancing the dead rent in respect of any area more than once during any period of four years. Halsbury's Laws of England, 4th Edition, Volume 31, paragraph 236, points out that 'usually the royalties are made to merge in the fixed rent by means of a provision that the lessee, without any additional payment may work, in each period for which a payment of fixed rent is made, so much of the minerals as would, at the royalties reserved, produce a sum equal to the fixed rent'. The same purpose is achieved by the proviso to section 9-A(1) and in the Mineral Concession Rules, 1960, by the proviso to clause (c) of rule 27 under which the lessee is liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount, but not both. In all State rules which provide for payment of both dead rent and royalty, there is a provision that only dead rent or royalty, whichever is higher in amount, is to be paid, but not both. Rules made under the 1948 Act, as for example, rule 41 of the Mineral Concession Rules, 1949, and rule 18 of the Bombay Mineral Extraction Rules, 1955, also contained a similar provision. Thus, the practice followed throughout in exercising the power to make rules regulating the grant of mining leases has been to provide that either dead rent or royalty, whichever is higher in amount, should be paid by the lessee, but not both."

65.. Following paras in Halsbury's Laws of England (Fourth Edition) 2003 Re-issues need to be noted:

"Para 321: Nature of mining lease: A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent or royalty, spread over a number of years.

Para 322: Statutory definitions of 'mining lease': In the Law of Property Act, 1925, 'mining lease' means a lease for mining purpose, that is, the searching for, winning, working, getting, making merchantable, carrying away or disposing of mines and minerals, or connected purposes, and includes a grant or licence for mining purposes; and 'lease' includes an underlease or other tenancy.

In the Settled Land Act, 1925 and the Landlord and Tenant Act, 1927, 'mining lease' means a lease for any mining purpose or

connected purposes, and 'mining purposes' includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any

manufacture, carrying away and disposing of mines and minerals, in or under land, and the erection of buildings and the execution of engineering and other works suitable for those purposes.

'Mining lease' is also defined for the purposes of the Opencast Coal Act, 1958 whilst 'coal-mining lease', 'lease' and 'mine of coal' were all defined for the purposes of the Coal Act, 1938.

Para 323: Rents and royalties: An agreement for a lease usually contains stipulation as to the dead rents and other rents and royalties to be reserved by, and the covenants and provisions to be inserted in the lease, but the omission to provide for the payment of a dead rent does not render the agreement so inequitable as to be unenforceable

Rent and royalties are true rents in the sense that they are incident to the reversion, but periodical payments under a lease of mines for a specific period may amount to personal debts only.

A lessee who goes into possession and works minerals before completion of the lease may be ordered on interim application to pay into Court the amount of royalties due in respect of minerals raised.

Para 324: Usual provisions in leases: The statutory formalities regarding the disposition of an interest in land will apply to a contract for a mining lease. In a contract for a lease for working a mine, time is of the essence of the contract even if not expressly stated to be so. Mining leases usually contain clauses providing for the reference of dispute to arbitration or determination by an expert where the value of the mineral gotten is in dispute."

66.. Relevant clauses in the Lease Deed dated May 28, 1992 also need to be quoted. They read as follows:

.....

Part V: RENT AND ROYALTIES RESERVED BY THE LEASE

1.. To pay dead rent or lease whichever is higher.

The lessee shall pay, for every year except the first year of the lease, dead rent as specified in clause (2) of this Part:

Provided that, where the holder of such mining lease becomes liable under section 9 of the Act, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to

pay either such royalty or the dead rent in respect of that area, whichever is higher

2.. Rate and mode of payment of dead rent:

Subject to the provisions of clause (1) of this Part, during the subsistence of the lease, the lessee shall pay to the State Government

(Assessment Order to be issued in this form)

COMMERCIAL TAXES DEPARTMENT

(Rules 18 and 21 of the Kerala General Sales Tax Rules, 1963)

PROCEEDINGS OF THE ~~SALES TAX OFFICER~~ Asst.Comm(Assmt)Spl.Cir.Kollam.

Present:-Sri.Sunny Jacob

1. Assessment No. 12015094/96-97/CSI Revised asper Rule 6(7) of CST(R)Rules Dated 27.3.2002
2. Name of the assessee M/s. KSCDC
3. Nature of business Kollam
4. Place or places of business

Year of Assessment

	Rs.	P.
5. (i) Total turnover returned in Form 8/9		
(ii) Turnover on which exemption is claimed		
(iii) Taxable turnover furnished		
6. Taxable turnover determined by assessing authority (here split turnover subject to different rates of tax seperately)		
7. Documents produced in support of the return		

Read:—1. This Office Notice dated 19.11.01

2. Reply of the dealer dated 26.3.01

ORDER

The final assessment for the year 96-97 was completed fixing the total interstate sales turnover at Rs.94,80,870/-. Out of this turnover fixed, the turnover of which disallowance was made due to difective C Form/non availability of C Form etc. was fixed at Rs.15,16,140/- levying CST @ 10% and turnover proved by C Form at Rs.79,64,730/- levying tax @ 4%.

On further scrutiny it is seen that the taxable turnover for which CST was leviable @ 10% on the basis of the disallowance made ax explained above works out to Rs.34,42,669.92 as shown below as against Rs.15,16,140/- fixed in the assessment.

ye-product sales and CNSL Sales	Rs. 4111811.37+ 20
C Form rejected	Rs. 978768.55
Non production of C form	Rs.2052700.00
Total	Rs.3442669.92
Less assessd @ 10%	Rs.1516140.00
Balance to be assessed @ 10% but assessed @ 4%	Rs.1926529.92
ie	Rs.1926530/-

It was therefore proposed to assess the above turnover of Rs.19,26,530/- at the differential rate of 6%.

The proposals above let known to the dealer as per 1st reference for which the assessee filed the 2nd cited reply stating that the details of rejection of C form is not explained to them. It had been dealt with at length in the pre assessment notice as well as the original assessmnet order. A mistake is working out the turnover is just made good as per this order. In the circumstances the assessment is modified as under,

CST due at the differential rate of 6% on Rs.1926530/-	Rs.1,15,591.80
Say	Rs.1,15,592/-
Paid	nil
Balance	Rs.1,15,592/-

Demand notice issued.

Asst.Commissioner(Assmt)III,
Special Circle, Kollam.

To,

The assessee,
Copy submitted to DC,Kollam.

tn/-

No: S9 2129/03

Office of the Deputy Commissioner,
Commercial Taxes, Kollam.
Dated: 05-10-2012

From

The Deputy Commissioner,
Commercial Taxes, Kollam.

To

The Joint Commissioner(A & I),
Commercial Taxes,
Thiruvananthapuram.

Sir,

Sub: Draft para – short levy due to mistake in computation – Office of the Asst. Commissioner, Special Circle, Kollam - M/s Kerala State cashew Development Corporation for the year 1996-97 – present position – report submitting of – reg.

Ref: 1. RR/DP – 2997/03-04 Dated 28-3-2008

2. E5.22817/03/CT Dated 4-8-2012 of the JC (A & I), Tvm.

2. H.2233/01 Dated 28-9-2012 of the Assistant Commissioner (Assessment), Special Circle, Kollam.

****

Kind attention is invited to the reference cited. The Asst. Commissioner (Assmt), Special Circle, Kollam, vide reference 3rd cited has reported that inorder to set right the audit objection raised inrespect of the above referred Draft Para, the assessment was revised on 27-3-2002 and the amount due was advised for collection under Revenue Recovery vide RRC No. 10/03-04 Dated 15-5-2003 of the Asst. Commissioner, Special Circle, Kollam, which is still pending to be collected.

Yours faithfully,

Deputy Commissioner,
Commercial Taxes, Kollam

'9.2129/03

Office of the Deputy Commissioner,
Commercial Taxes, Kollam.
Dated : 26.03.2012.

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The Deputy Commissioner,
Commercial Taxes, Kollam.

To

The Joint Commissioner (A&I),
Commercial Taxes,
Thiruvananthapuram.

Sir,

Sub: DP – Short levy due to mistake in computation – M/s.KSCDC, Kollam for the year 1991-92 – report submitting of– reg.

Ref: 1. RR/DP No.2997/03-04 dated 28.03.2000.
2. E5-22817/03 dated23.01.2012 of the JC(A&I), Tvpm.
3 H-2233/01 dated 03.03.2012 of the AC(A), Special Circle, Kollam.

****

Kind attention is invited to the reference cited. The Asst.Commissioner(Assmt), Special Circle, Kollam vide reference 3rd cited has reported that the arrears in respect of the above referred Draft Para case is still pending collection before the Revenue Authorities vide RRC No.10/03-04 dated 15.05.03 of the Asst.Commissioner(Assmt), Special Circle, Kollam.

Yours faithfully,

Deputy Commissioner,
Kollam

Draft Lr. from Commissioner, Comml.Taxes, Tvpm.

. . .

No. A5-22817/03/CT. Date: ..7..2003.

To

The Secretary to Govt.,
Taxes (C) Department,
Thiruvananthapuram.

Sir,

Sub:- Audit report (RR) - Short levy of tax due to incomputation - M/s. Kerala State Cashew Development Corporation for the year 96-97 - Report forwarding - reg:-

Ref:- 1. Govt. Lr.No. 8322/C2/2003/TD dtd.4.4.2003.
2. Rep (RR) DP No. 2997/03-04/312 dt:28.3.03 of AG, Tvm.

. . .

Attention is invited to the reference cited. The audit objection in this case is that while finalising the CST assessment for the year 96-97 of an assessee, although the assessing officer proposed to levy tax at 10% on turnover of Rs. 34.43 lakh not supported by valid 'C' Form declaration, tax @ 10% was levied only on a turnover of Rs. 15.16 lakh and tax at 4% was levied on turnover of Rs. 19.27 lakh. This resulted in short levy of CST of Rs. 1.16 lakh.

This was examined with reference to the connected records and in consultation with the Dy.Commissioner, Kollam. He has reported that the short levy was made good by assessing the turnover at the differential rate of 6% vide order dt: 27.3.02. Meanwhile the original assessment dt. 5.3.01 was modified by the Dy.Commissioner (A). This was given effect to vide proceedings dt. 28.6.02; assessing a turnover of Rs. 9,78,768.55 at 4% which was assessed at the higher rate of 10% in the original assessment order as the dealer has produced evidence to

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credit for remittance the amount of tax paid was wrongly given as ₹. 1,15,592/- instead of the correct figure of ₹. 4,06,376/-. This mistake was rectified vide proceedings dt. 6.6.2003 of Asst.Commissioner (Assmt.), Kollam. The balance CST due is ₹. 1,36,747/-. This amount alongwith interest upto 6/03 of ₹. 69,741/- is pending collection under RR as per RRC No. 10/02-03. Hence the Accountant General may be addressed to drop the Draft Para.

Yours faithfully,

24/7/03

Commissioner.

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

Present : Sri. V. Somasundaran I.A.S.

Subj:- Draft Para - Short levy of tax due to mistake in computation - M/s. Kerala State Cashew Development Corporation Ltd for 1996-97 - Disciplinary action initiated against Sri. Sunny Jacob, formerly Asst. Commissioner(Asstt.), Special Circle, Kollam, now working as Asst. Commissioner(Asstt.)III, Office of the Asst. Commissioner(Asstt.), Special Circle-II, Ernakulam - Further action dropped - Orders issued - Regd.

Read:- 1) Report(RH)/DP-2997/03-04/332 dated 28-8-03 of the Accountant General(Audit).
2) Lr.No. E3-22817/03/CT dated 24-2-03 of this office.
3) Explanation dated 3-1-04 filed by Sri. Sunny Jacob, Asst. Commissioner.

* * * *

The Accountant General (Audit), while auditing the assessment files in Sales Tax Office, Special Circle, Kollam, raised the objection that while finalising the Central Sales Tax assessment of M/s. Kerala State Cashew Development Corporation Ltd for the year 1996-97, although the assessing officer proposed to levy tax at 10 percent on a turnover of Rs. 34.43 lakh not supported by valid 'C' Form declarations, tax at 10 per cent was levied on a turnover of Rs. 15.16 lakhs only and on the balance turnover of Rs. 19.27 lakh, tax at 4% only was levied which resulted in short levy of Central Sales Tax of Rs. 1.16 lakh.

On receipt of the Draft Para, factual report on the same was called for from the Deputy Commissioner, Kollam.

The Deputy Commissioner, Kollam in his report dated 16-5-03 stated that the observation made by the Accountant General was correct and as per Order No.1201 5094/96-97/CST dated 27-3-02 of the Assistant Commissioner(Asstt.), Special

Circle, Kollam, the escaped assessment under Rule 6(7) of the CST (Kerala) Rules, was completed. The orginal irregular assessment in this case was completed by Sri. Sunny Jacob, the then Assistant Commissioner(Assmt.), Special Circle, Kollam.

In the circumstances, the explanation of the delinquent officer was called for vide this office letter cited as 2nd paper above for the lapse on his part.

The Officer filed his explanation vide reference cited as 3rd paper above. In the explanation, the individual has stated that in the pre-assessment notice, the total turnover proposed was Rs. 94,80,870/- and tax was proposed to be levied at 10% on a turnover of Rs. 15,16,140/- only and for the balance amount of Rs. 79,64,730/-, the proposal itself was at 4%. In the assessment order also, same apportioning of turnover had been adopted and as such there was no deviation from the proposals as alleged.

It is further stated that there was no mention of the non-availability of 'C' Forms for Rs. 20,870/- and the availability of 'C' Forms for Rs. 19,47,400/-, the computation in the pre-assessment notice was correct and there had been no deviation from the proposal while completing the final assessment.

The officer has put in that he had verified each and every 'C' Form declaration filed by the assessee, because of which only that he could detect defective 'C' Forms for Rs. 9,78,788.55. It is stated that he was transferred from the office of the Commissioner of Commercial Taxes, Thiruvananthapuram in early January 2001 to Special Circle, Kollam at a time when that seat left vacant for three months,

and having nearly 30 [illegible] pending [illegible] by March 2001 and due to the pressure of work [illegible] new to the dealer certain [illegible] notices had to be issued without re-checking and proper comparing [illegible]. However no turnover is escaped or [illegible] assessment or assessed at a lower rate.

Besides, the officer was [illegible] on the matter [illegible] as requested by him. It is clear that there is no loss of revenue or wilful lapse on the part of the individual.

In the circumstances, the following order is issued:-

ORDER No. 25-22517/01 dated 09-08-2[illegible]

The disciplinary action initiated against Sri. Sunny Jacob, formerly Assistant Commissioner(Assmt.), Special Circle, Kollam now working as Assistant Commissioner (Assmt.) III, Office of the Assistant Commissioner(Assmt.), Special Circle-II, Ernakulam is hereby dropped.

Sd/

[illegible]

To

Sri. Sunny Jacob, Asst. Commissioner(Assmt.) III, Office of the Asst. Commissioner(Assmt.), Special Circle-II, Ernakulam.
through the Deputy Commissioner, Ernakulam.

Copy forwarded to : The Deputy Commissioner, Ernakulam in triplicate. She is requested to serve one copy of the proceedings on the individual and to return the served copy with dated acknowledgement to this office urgently.

// By Order //

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KERALA NIYAMASABHA PRINTING PRESS