

## Rajasthan Tax Board, Ajmer

Sunil & Brothers Vs CTO	Appeal No. 1063/2015/Tonk
Vijay Trading Co. Vs CTO	Appeal No. 1064/2015/Tonk
Vardhman Traders Vs CTO	Appeal No. 1065/2015/Tonk
Bundel Gas Vs CTO	Appeal No. 1066/2015/Tonk
Anand Marketing Vs AC	Appeal No. 1270/2015/Bikaner
Champalal Vs ACTO	Appeal No. 1271/2015/Bikaner
Gangaram Vs ACTO	Appeal No. 1273/2015/Bikaner
Aditya Agrotech Vs AC	Appeal No. 1274/2015/Bikaner
Metro Electrical Vs ACTO	Appeal No. 1320/2015/Bikaner
Giriraj & Co. Vs ACTO	Appeal No. 1321/2015/Bikaner
Hindustan Electronics Vs ACTO	Appeal No. 1322/2015/Bikaner
Bharat Mill Store Vs ACTO	Appeal No. 1323/2015/Bikaner
Punjab Enterprises Vs AC	Appeal No. 1960/2016/Bikaner
Bikaner Sales Vs AC	Appeal No. 1961/2016/Bikaner
Sodha Construction Vs AC	Appeal No. 1962/2016/Bikaner

L.B.

SHRI V. SRINIVAS, CHAIRMAN

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

O.P. Dosaya, Advocate

for Appellants

Shri Anil Pokhrana &

Shri R.K. Ajmera,

Dy. Govt. Advocates

for Respondents

R.R. Singhvi, Advocate

V.C. Sogani, Advocate

V.K. Garg, Advocate

Arinjay Jain, Advocate

Amicus Curie

**Dated : 07/03/2018**

### JUDGMENT

1. This larger bench has been constituted in light of the provisions as contained in Rule 31(4) the Rajasthan Value Added Tax Rules, 2006 (hereinafter called the "RVAT Rules") and Clause 7 (1) of the Rajasthan Tax Board Regulations, 2017



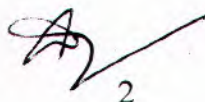
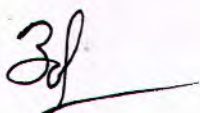


(hereinafter called the "Regulations") to decide a wider question of law relating to interpretation of Section 21 of the Rajasthan Valued Added Tax Act 2003 (hereinafter called the "Act") alongwith Rule 19(2) and Rule 19A of the RVAT Rules, for levy of penalty/late fee in case of late filing or non-filing of returns as the two Single Benches of the Tax Board have decided the matter taking opposite views to each other.

2. One SB of the Tax Board, vide its order in appeal no. 1326/2014/Jodhpur, dated 20.04.2016 has held that if the electronic return was filed on a particular date and thereafter the hard copy of the same was submitted after the stipulated period, then the date of submission of such return shall be deemed to be the date on which electronic return was filed, and accordingly no late fees is payable as per rule 19(2) of the RVAT Rules. Whereas, another bench of the Tax Board, vide its order in appeal no. 2254/2015/Bikaner and other connected matters, dated 18.07.2017, has taken a diametrically opposite view on the issue and has held that the date of submission of the return shall be deemed to be the date on which the signed hard copy of the electronically filed return is submitted. This SB has further held that in case of late submission of the hard copy the late fees shall be payable as prescribed under the Rules. So, the precise issue for consideration of the Larger Bench is:

***"In the facts and circumstances of the cases under consideration If the dealer has filed the return electronically through the official website and signed copy of the Acknowledgment is not submitted within the prescribed time then whether the late fee as per the provision of 19(2) [sic Rule 19(2)] is leviable or not"***

3. These appeals have been filed by the appellant dealers (hereinafter called the "appellants"), against orders of the Appellate Authority, Commercial Taxes Bikaner and Jaipur III (hereinafter called the "appellate authority") who upheld the levy of late fee under rule 19A as imposed by the respective





Assessing Authorities. The details of the same are as mentioned below :-

Appeal No.	A.Y.	Appellate Authority's order Details		Date of the orders by which the late fees was imposed by the assessing authorities
		Appeal No.	order dated	
1063/2015/Tonk	2011-12	81/13-14/VAT/Tonk	16.03.2015	19.12.2013
1064/2015/Tonk	2011-12	87/13-14/VAT/Tonk	16.03.2015	18.12.2013
1065/2015/Tonk	2011-12	78/13-14/VAT/Tonk	16.03.2015	18.12.2013
1066/2015/Tonk	2011-12	88/13-14/VAT/Tonk	16.03.2015	18.12.2013
1270/2015/Bikaner	2012-13	470/RVAT/BKN/2013-14	26.03.2015	28.01.2014
1271/2015/Bikaner	2011-12	471/RVAT/BKN/2013-14	27.03.2015	30.01.2014
1273/2015/Bikaner	2011-12	473/RVAT/BKN/2013-14	27.03.2015	09.01.2014
1274/2015/Bikaner	2011-12	474/RVAT/BKN/2013-14	26.03.2015	15.01.2014
1320/2015/Bikaner	2011-12	30/RVAT/BKN/2014-15	24.04.2015	20.02.2014
1321/2015/Bikaner	2011-12	31/RVAT/BKN/2014-15	27.04.2015	12.02.2014
1322/2015/Bikaner	2011-12	35/RVAT/BKN/2014-15	24.04.2015	23.12.2013
1323/2015/Bikaner	2011-12	49/RVAT/BKN/2014-15	24.04.2015	19.02.2014
1960/2016/Bikaner	2012-13	348/RVAT/BKN/2014-15	19.01.2016	28.11.2014
1961/2016/Bikaner	2012-13	377/RVAT/BKN/2014-15	03.02.2016	05.12.2014
1962/2016/Bikaner	2012-13	356/RVAT/BKN/2014-15	03.02.2016	27.01.2015

4. As a common issue is involved in all these appeals and that is the subject matter for consideration before this larger bench, therefore, the same are disposed off by a common order. Copy of the order be placed on each relevant appeal file.
5. As evident from the above table, the assessments in which the impugned late fee was levied, pertain to the years 2011-12 and 2012-13. As the electronic filing of returns and the provisions for late fee were made effective from beginning of the year 2011-12, so it would be endeavor of this Bench to lay the correct law on the issue under reference for the year 2011-12 onwards.
6. At the outset, the learned Deputy Government Advocate Shri Anil Pokharna drew attention of the Court about composition of the Bench, as one of the members in Larger Bench Shri K.L. Jain has decided a similar issue in lead appeal no. 2109/2014/Bikaner, vide order dated 22.02.2017, so looking into the judicial propriety, he left it to the discretion of the Bench as to whether Shri Jain should remain part of the Larger Bench or not. On this issue we have given a considered thought and perused the Rajasthan Tax Board Regulations, 2017

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wherein the Clause 17 provides the procedure for reference to a Division Bench (DB) or to a Larger Bench (LB) and there is no specific reference to exclude such member who has already decided the issue. Rather, the sub clause (4) of Clause 17 of the said regulations provides that when there is a difference of opinion between the members comprising the division bench on the issues involved in the case under consideration, then both the members comprising the division bench shall write their independent judgments and thereafter make a reference to the Chairperson who shall appoint a third member to consider the case and the case shall be decided as per the majority view. Since, as per the RTB regulations no such exclusion is prescribed, therefore, the objection as raised by the learned DGA is not sustainable.

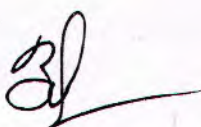
7. Moreover, some judicial precedents were also looked into in this regard, and while perusing judgments of the Hon'ble Supreme Court, it was found that in Civil Appeal No. 3453/2002, Hon'ble Justice Ruma Pal was a member of the Division Bench which delivered the judgment on 26.09.2003 and referred the matter to the Hon'ble Chief Justice for creation of a Constitution Bench and consequently the Constitution Bench so constituted, also consisted the same Hon'ble Justice Ruma Pal as member of it, so we don't find any judicial impropriety in inclusion of a member who has delivered a judgment on the same issue. As the Tax Board Regulations as well as the judicial precedents as quoted above, do not stipulate or envisage such exclusion of a member from sitting on the Larger Bench, therefore, the preliminary objection of the learned DGA does not hold any valid ground and the same is over ruled.
8. Brief facts leading to the present appeals are that the provision for electronic filing of the returns came into effect from 01.04.2011 and the dealers in general were required to file the quarterly and annual returns electronically through official





website of the Commercial Taxes Department. The returns were though required to be signed digitally, but in case the returns could not be signed digitally then there was a provision to submit the acknowledgement as generated from the official website of the Commercial Taxes Department and it was also provided that in case of non-furnishing of such acknowledgment, it shall be deemed to be a case of non-filing of return. Some of the dealers either filed the returns belatedly or the acknowledgments of the same were not submitted within the prescribed period or in some cases the returns were not filed at all. The assessing authorities treated such late filing of the returns/ non-submission of hard copies or acknowledgements within the prescribed time limit, as contravention of rule 19 and levied late fee at the time of finalization of the assessments for the relevant year. In some cases where the returns were not filed at all, the assessing authorities in these cases imposed the late fee under rule 19A of the RVAT Rules.

9. Aggrieved of the assessment orders, the appellants filed the appeals before the appellate authorities who upheld the levy of late fees and rejected their appeals. Hence, these appeals have been filed before the Tax Board under Section 83 of the Act.
10. Learned advocate appearing for the appellants submits that prior to 14.07.2014, in case the acknowledgment of the return was not submitted then it was treated to be a case of non-filing of the return and in such a case, the assessing authority has no power to levy late fees as such. Moreover, when the acknowledgment of the electronically filed return is not submitted as provided under the rules, then there is no provision for levy of late fees.
11. Learned Deputy Government Advocate Shri Anil Pokharna submits that there are specific charging sections under the Act for levy of tax, interest and late fees. It has been provided in Rule 19(3) that dealer has to give his consent to operate the official website of the Commercial Taxes Department. In





pursuance of Section 21 and Rule 19, the filing of the return is mandatory and in case of late filing of the returns a late fee has been prescribed under Rule 19A of the RVAT Rules. So, he submits that a correct law has been laid in the judgment of the SB dated 18.07.2017.

12. Learned Deputy Government Advocate Shri R.K. Ajmera submits that the intention behind taking signed copy / hard copy of the electronically filed return is for ascertaining genuineness of the e-returns so filed, therefore, any contravention would attract late fee.
13. Apart from the learned advocate for the appellants and the learned Deputy Government Advocates, the *amicus curie* Shri R.R. Singhvi, Shri V.C. Sogani, Shri V.K. Garg and Shri Arinjay Jain, Advocates/Tax practitioners also appeared to assist the Court and made their submissions too. Shri R.R. Singhvi submits that for levy of late fee the words like 'charge' or 'impose' are not there in the Act/Rules, therefore, in case the return is not filed, no late fee can be levied and imposition of penalty is the only option available for such delinquency. He further submits that if the late fee has not been deposited by the dealer then it is not binding upon the department to accept such return and in such cases, the assessing authority cannot enforce the levy of late fee, instead he should initiate penalty proceeding if any such provision is available in the law. Shri V.C. Sogani submits that intention of the legislature is to ensure the proper and timely collection of tax, so for technical breach of late filing of return no late fee should be levied. Similarly, Shri V.K. Garg submits that the assessing authority does not have power to levy the late fee because it is the assessee himself who has to quantify the period of late submission of return and accordingly pay the late fee, so the imposition of late fee by the assessing authority is wholly illegal. Shri Arinjay Jain submits that late filing of return or the hard copy is merely a technical breach for which no late fees or penalty should be leviable.

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14. We have carefully heard the learned counsel for the appellants, learned Deputy Government Advocates and the amicus curies. The question for consideration before us relates to the levy of late fees on late submission/ non-submission of return and/or late submission of hard copy/ acknowledgement of the electronically filed returns.
15. For this, we have to first examine the relevant provisions as contained in the Act as well as the rules.

**Legislative History of provisions relating to filing of returns and penalty provisions for non-filing/late filing.**

16. Under the Rajasthan Sales Tax Act 1954 and 1994, there were specific provisions of penalty for late filing or non-filing of the returns. Under the Act of 1954, the provisions for filing of returns were contained in Section 7 and penalty provisions were there in Section 7AA of the Act, whereas in the Act of 1994, the provisions for filing of returns are contained in Section 26 and the penal provisions for late filing/non-filing were enshrined in Section 61 of the Act. For ready reference, Section 26 and 61 of the RST Act, 1994 are reproduced hereunder:

*"26. Filing of returns.- (1) Every registered dealer, and such other dealer as may be required by notice to do so by the assessing authority shall furnish prescribed returns, for the prescribed period, in the prescribed form, in the prescribed manner and within the prescribed time to the assessing authority.*

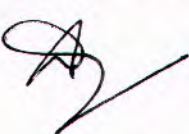

*(2) .....*

*(3) .....*

*(4) ....."*

*"61. Penalty for failure to furnish return.- Where the assessing authority is satisfied that any dealer has without reasonable cause failed to furnish a return under section 26 within the allowed, he may direct that such dealer shall pay, in addition to the amount of tax payable by him,-*

*(a) where tax is required to be paid every month under section 25, a penalty of rupees ten per day for the period during which*

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*the default in furnishing of such return continues, but not exceeding in the aggregate twenty per cent of the tax so assessed; and*

*(b) in all other cases, a penalty of rupees five per day subject to a maximum limit of rupees five hundred, for the period during which the default in furnishing of such return continues."*

17. After introduction of the Value Added Tax Act, 2003 the position of law as prevailing on 01.04.2011 was as under:

**"Section 21. Filing of return.-** *"(1) Every registered dealer shall assess his liability under this Act, and furnish return, for such period, in such form and manner and within such time as may be prescribed, to the assessing authority or to the officer authorized by the Commissioner".*

***The sub-section (1) was substituted by the Rajasthan Finance Act, 2011 w.e.f. 15.04.2011 and the same is reproduced as under:***

***"[(1) Every registered dealer shall assess his liability under this Act, and shall furnish return, for such period, in such form and manner, and within such time and with such late fee not exceeding fifty thousand rupees, for delayed furnishing of returns, as may be prescribed, to the assessing authority or to the officer authorized by the Commissioner.]"***

*(2) Any person or a dealer as may be required by a notice to do so by the Assessing authority or by an officer authorized by the Commissioner in this behalf, shall furnish return for such period in such form and manner and within such time as may be specified.*

*(3) Notwithstanding anything contained in sub-section (1), where the Commissioner is of the opinion that it is expedient in the public interest so to do may by a notification in the Official Gazette extend the date of submission of the returns or may dispense with the requirement of filing any or all the returns by a dealer or class of dealers."*

So, after amendment in Section 21 of the Act w.e.f. 15.04.2011, the concept of 'late fee' has come into vogue.





18. In the RVAT Act, the provisions for penalty were mentioned in Section 58 and which have been deleted w.e.f. 15.04.2011, are reproduced as under:

*"Section 58. Penalty for failure to furnish return.- Where the assessing authority or any other officer not below the rank of Assistant Commercial Taxes Officer as authorized by the Commissioner is satisfied that any dealer has, without reasonable cause, failed to furnish prescribed returns within the time tallowed, he may direct that such dealer shall pay by way of penalty,-*

*(i) in case the dealer is required to pay tax every month under section 20, a sum equal to rupees one hundred per day for first fifteen days of such default and thereafter a sum equal to rupees five hundred per day for the period during which the default in furnishing such return continues, but not exceeding in the aggregate thirty percent of the tax so assessed; and*

*(ii) in all other cases, a sum equal to rupees fifty per day subject to a maximum limit of rupees five thousand, for the period during which the default in furnishing of such return continues."*

So, by virtue of amendment in Section 21, precisely by substituting sub-section (2) alongwith deletion of Section 58, the old system was transformed to a new system w.e.f 15.04.2011, wherein the returns were required to be submitted electronically and instead of levy of penalty for delinquency in filing of the returns, the concept of self-compliance and deposit of late fee for late filing of the returns, came into prevalence.

19. It is worth mentioning that with increasing use of computers at large and need for Electronic Data collection at various levels of governance, initially, the State Government vide notification no. F.12(114)FD/Tax/07-61 dated 29.08.2008 inserted sub-rule (7) in rule 19 whereby the Commissioner, Commercial Taxes, Rajasthan (hereinafter referred as the 'Commissioner') was authorised to specify any dealer or class of dealers who shall file the return electronically and accordingly the Commissioner vide his order dated 27.02.2009, specified the two classes of





dealers who were required to file returns electronically. Later, vide notification dated 09.03.2011 the then existing rule 19 was substituted and under sub-rule (2) the specific provision for electronic filing of return was introduced. Simultaneously, the then existing rule 19A was substituted whereby the specific provision for payment of late fees on late furnishing of the returns, was brought in. The rules 19 and 19A are being reproduced in the following paras.

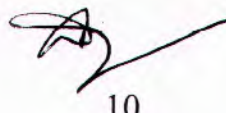
20. The Rule 19 (2) as existed on 01.04.2011, was as under:

*"(2) Every dealer shall submit return electronically through the official web-site of the department, unless otherwise notified by the Commissioner. The return shall be digitally signed by the dealer or his business manager and in case it is not digitally signed, the dealer shall furnish, the acknowledgement generated through Official Web-Site of the Department and shall be verified by himself or his business manager by affixing his signature on it, <sup>1</sup>[within fifteen days of the last date of filing of such return(s)], failure to do so shall be deemed to be a case of non filing of returns(s)"*

*<sup>1</sup> this was amended on 01.04.2013 and substituted as under:"[within fifteen days of the last date of filing of such return(s) and in case the return(s) is filed after the last date of filing of return(s), within fifteen days of the filing of such late return(s)]"*

On 14.07.2014, the sub-rule (2) of rule 19 was further amended and substituted as under:

*"(2) Every dealer shall submit return electronically through the official website of the department, unless otherwise notified by the Commissioner. The return shall be digitally signed by the dealer or his business manager. However, where the dealer has given his consent to use the official website for submitting return in the prescribed manner, he may submit return without digital signature. However, for the period prior to 01.04.2014, if the dealer has failed to furnish the signed copy of acknowledgement generated through the official website of the department, within the time prescribed under the rules which were in force at that time, the date of submission of signed copy of said acknowledgement shall be deemed to be the date of the filing of the return."*





21. The rule 19A as existed on 01.04.2011 and afterwards is reproduced hereunder:

***For the period 01.04.2011 to 31.03.2012***

*(as substituted by the amendment dated 09.03.2011 w.e.f. 01.04.2011)*

***"19A Late fee.- Where a dealer furnishes the return after the prescribed time, he shall pay a late fee of-***

- (i) rupees one hundred per day for a period of first fifteen days and rupees five hundred per day thereafter, subject to a maximum of rupees fifty thousand or thirty percent of the tax assessed whichever is lower, in case he is required to pay tax for each month or part thereof under section 20 of the Act; and*
- (ii) rupees fifty per day subject to a maximum of rupees five thousand, in all other cases."*

***For the period 01.04.2012 to 31.03.2013***

*(as substituted by the amendment dated 30.03.2012 w.e.f. 01.04.2012)*

***"19A Late fee.- Where a dealer furnishes the return after the prescribed time he shall pay a late fee of-***

- (i) rupees one hundred per day subject to a maximum of rupees fifty thousand in case the dealer is required to pay tax for each month or part thereof under section 20 of the Act; and*
- (ii) rupees fifty per day subject to a maximum of rupees five thousand, in all other cases."*

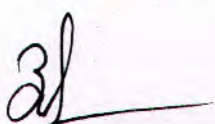
***For the period 01.04.2013 to 13.07.2014***

*(as substituted by the amendment dated 03.03.2013 w.e.f. 01.04.2013)*

***"19A Late fee.- Where a dealer furnishes the return after the prescribed time, he shall pay a late fee of-***

- (i) rupees one hundred per day subject to a maximum of rupees twenty five thousand, in case the dealer is required to pay tax for each month or part thereof under section 20 of the Act;*
- (ii) rupees fifty per day subject to a maximum of rupees one thousand, in case there is no turnover of the dealer during the period under return; and*
- (iii) rupees fifty per day subject to a maximum of rupees five thousand, in all other cases."*

***For the period 14.07.2014 to 31.03.2015***





*(as substituted by the amendment dated 14.07.2014 w.e.f. 14.07.2014)*

*"19A. Late fee.- Where a dealer furnishes the return after the prescribed time, he shall pay a late fee of-*

- (i) rupees twenty per day subject to a maximum of rupees one thousand, in case there is no turnover of the dealer during the period under return; and*
- (ii) 0.05% of the net tax payable per day, subject to a minimum of Rs. 50 per day and a maximum of Rs. 500 per day;*

*Provided that the total late fee shall not exceed 10% of net tax payable for that quarter/ year subject to a minimum of Rs. one thousand and a maximum of rupees twenty five thousand, in all other cases."*

22. On conjoint reading of section 21 as it stood on 15.04.2011, with relevant rules 19 & 19A as prevalent that day for late filing of the return(s), keeping in mind the fact that section 58 was deleted from the statute book from that day, the late fee as prescribed under Rule 19A was payable by a dealer and where the return was not furnished the provisions of rule 19A would not apply because the charging Section 21(1) categorically specifies that late fee is "for delayed furnishing of returns" only, therefore, in our considered view it would not cover the non-filing of returns in its ambit, because prior to 15.04.2011 the section 58 provided for the "penalty for failure to furnish return" and on its abrogation, had the legislature any intent to levy late fee on non-furnishing of return too, then appropriate provision could have been incorporated in section 21 itself. Since, post abrogation of section 58 there is no specific provision for payment of late fee for non-filing of return from 15.04.2011, therefore, any penal action for such delinquency can be taken only under section 64 of the Act, which is as under:

*"64. Penalty for other violations.- Where any person or a dealer-*





(i) *fails to comply with a direction given by any officer or authority appointed or authorised or constituted under this Act, or*

(ii) *violates any of the provisions of this Act or the rules made thereunder for which no specific penalty has been provided elsewhere under this Act or the rules,*

*The assessing authority or any other officer not below the rank of an Assistant Commercial Taxes Officer as authorised by the Commissioner, may direct that such person or dealer shall pay by way of penalty a sum not exceeding rupees two thousand, and in case of a continuing default, a further penalty of rupees twenty five for every day of such continuance"*

23. The section 24 provides for the modalities for finalization of the assessments, and prior to 31.07.2014 there was no specific provision enshrined into this section for levy of penalty in cases of non-filing of returns, but after amendment in the said section, the penal provisions have been provided under sub-section 4 of section 24, and the same is reproduced hereunder:

**"24. Assessment-** (1) *Assessment of a dealer shall be for a year and it shall be made after the last date of furnishing of annual return for the year. However, the assessment of a closed business may be made immediately after its closure.*

(2) .....

(3) .....

(a) .....

(b) .....

(4) *Where a dealer, fails to furnish return in accordance with the provisions of section 21, the assessing authority or the officer authorised by the Commissioner, after giving an opportunity of being heard to the dealer and after conducting such enquiry as he may consider necessary, shall assess the dealer to the best of his judgment on the basis of the material available on record and shall impose a penalty, for non-filing of returns, of an amount equal to twenty percent*

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*of the net tax payable subject to a minimum of five thousand rupees.*

(5) .....

(6) ....."

So, in the cases where returns were required to be filed on or after 31.07.2014 and the same were not filed, in such cases the penalty under section 24(4) shall be leviable.

24. During the course of arguments, it was submitted by the advocate for the appellants that the duty to compute and deposit the late fee has been cast upon the assessee himself, so in case the late fee is not deposited by him, the assessing authority cannot levy it during the course of finalization of the assessment. However, the learned DGA Shri Ajmera submits that there exist specific provisions under the Act for assessment and the 'assessment' means determination of any liability of the dealer under the RVAT Act, so the argument of the appellants is against the law.

25. To decide this issue, it would be appropriate to study the relevant provisions of the Act. In this regard, definition of the term 'assessment' as given in sub-section (3) of section 2 alongwith the definition of the term 'Tax' as given in sub-section (37) of section 2, is worth reading and the same is reproduced hereunder:

***"(3) "assessment" means determination of liability under the Act."***

***"(37) "Tax" means any tax or other levy by any name leviable under the provisions of this Act;"***

As the term 'assessment' means determination of any liability under the Act and the late fee is also a liability under the Act, therefore, the assessing authority while finalizing the assessment is empowered to determine the late fee in case the dealer himself has not deposited the same. Therefore, it is held that in case, the return has been filed late and the dealer has not





deposited late fee then the assessing authority can very well quantify the late fee and determine the liability for payment of the same.

**Findings**

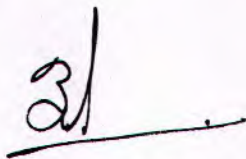
In light of the legal position as described above the reference to the Larger Bench is answered as follows:

1. For assessment year 2011-12 onwards the late fee is payable for late filing of returns only and in case the late fee has not been deposited by the dealers the assessing authority while finalizing the assessment, are competent to calculate and levy the late fee. As the 'fee' is not in the category of penalty therefore, no notice is required to be issued prior to levy of late fee.
2. In case of non-filing of returns between the period 15.04.2011 and 31.07.2014, since no specific provision existed for levy of late fees for non-filers, the late fee is not leviable. As the section 58 was deleted on 15.04.2011 and sub section (4) of section 24 was substituted on 31.07.2014 for levy of penalty for non-filing of returns, therefore, in such cases, the only recourse available to the assessing authorities was to levy penalty u/s 64 of the Act, categorized as "penalty for other violations".
3. In case the return has been filed electronically and its acknowledgement is not submitted at all, it shall be deemed to be a case of non-filing of return and in such cases the penalty u/s 64 would be leviable.
4. Looking into the provisions of rule 19(2) w.e.f. 14.07.2014, the date of submission of return shall be deemed to be the date on which the signed copy of the acknowledgment is submitted, and the late fee shall be calculated till such date.





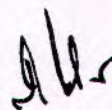
26. In light of the above mentioned findings, it is held that:
- (i) SB judgment dated 20.04.2016 as given in appeal no. 1326/2014/Jodhpur, does not lay down the correct law, hence stands overruled.
  - (ii) SB judgment dated 18.07.2017 in appeal no. 2254/2015/Bikaner and other connected matters, lays a correct law.
  - (iii) The third judgment of the SB dated 22.02.2017 in appeal no. 2109/2014/Barmer and other connected matters, though not part of the reference but highlighted by the learned advocate for the appellants as well as the learned DGA Shri Anil Pokharna, has also laid down the law correctly.
27. The issue under reference is decided as above and all the appeals are remitted back to the respective benches for decision in light of the law as laid down in this judgment.
28. Order pronounced.



(Omkar Singh Ashiya)  
Member



(K.L. Jain)  
Member



(V. Srinivas)  
Chairman