RAJASTHAN TAX BOARD, AJMER

Appeal No. 720/2011/Bharatpur
Tata Shree Bhagawati Oil Industries
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer
Antivision, Bharatpur ..... Respondent

Appeal No. 721/2011/Bharatpur
SVM Oil Mils Pvt. Ltd.
Bharatpur ... Appellant
V/s
Commercial Taxes Officer
Antivision,Bharatpur ..... Respondent

Appeal No. 722/2011/Bharatpur
Shree Goverdhan Oil Mils,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer
Antivision, Bharatpur .... Respondent

Appeal No. 723/2011/Bharatpur
Shree Bhagawati Udyog,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur ... Respondent

Appeal No. 724/2011/Bharatpur
Ram Industries (Oil industries) Bharatpur
..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur. Respondent

Appeal No. 732/2011/Bharatpur
National Industries & Oil Mills,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Special Circle,Bharatpur .... Respondent

Appeal No. 770/2011/Bharatpur
30Shiv Industries & Oil Mills,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 790/2011/Bharatpur
Choudhary Udyog,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle-A, Bharatpur ... Respondent

Appeal No. 791/2011/Bharatpur
Triveni Electordes ,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision,Bharatpur .... Respondent

Appeal No. 792/2011/Bharatpur
Prem Oils,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 793/2011/Bharatpur
Shree Madhav Industries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle-A, Bharatpur. Respondent

Appeal No. 794/2011/Bharatpur
Raj Electircalls & Oil Mils,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle-A,Bharatpur..... Respondent

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Appeal No. 795/2011/Bharatpur
B.R. Oils Mills,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent
Appeal No. 797/2011/Bharatpur
Yogesh Insustries & Oil Mills, Bharatpur
..... Appellant
V/s
Commercial Taxes Officer,
Antivision,Bharatpur ..... Respondent
Appeal No. 817/2011/Bharatpur
Manish Oil Products Pvt. Ltd., Bharatpur
..... Appellant
V/s
Assistant Commissioner
Circle, Bharatpur ..... Respondent
Appeal No. 820/2011/Bharatpur
Tata Shree Suraj Oil Industries, Bharatpur
..... Appellant
V/s
Commercial Taxes Officer,
Antivision,Bharatpur ..... Respondent
Appeal No. 836/2011/Bharatpur
N.K. Products,
Bharatpur ..... Appellant
V/s
Assistant Commercial Taxes Officer,
Bharatpur ..... Respondent
Appeal No. 842/2011/Bharatpur
Shree Heeralal Tel Udoyog,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special, Bharatpur ..... Respondent

Appeal No. 796/2011/Bharatpur
Vrihdavan Oil Products,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent
Appeal No. 799/2011/Bharatpur
Shri Laxmi Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent
Appeal No. 818/2011/Bharatpur
Vinayak Oil Industries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur ..... Respondent
Appeal No. 835/2011/Bharatpur
N.K. Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent
Appeal No. 837/2011/Bharatpur
Shree Loknedra Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent
Appeal No. 1070/2011/Bharatpur
Radhika Oil Industries,
Bharatpur ..... Appellant
V/s
Assistant Commercial Taxes Officer,
"A", Bharatpur ..... Respondent

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Appeal No. 1082/2011/Bharatpur
Shiv Shakti Oil Insutries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner "A",
Bharatpur ..... Respondent

Appeal No. 1083/2011/Bharatpur
Shree Bagpatie Insutries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special, Bharatpur ..... Respondent

Appeal No. 1084/2011/Bharatpur
Tikaram Insutries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner Special,
Bharatpur ..... Respondent

Appeal No. 1085/2011/Bharatpur
Kamala Oil Mills,
Bharatpur ..... Appellant
V/s
Assistant Commissioner Special,
Bharatpur ..... Respondent

Appeal No. 1724/2011/Bharatpur
Prem Oil,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 1725/2011/Bharatpur
B.R. Oil Mill,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 1726/2011/Bharatpur
Vrindawan Oil Product,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No.1727/2011/Bharatpur
Triveni Electorcles,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 1828/2011/Bharatpur
National Industries & Oil Mills,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur.... Respondent

Appeal No. 1850/2011/Bharatpur
Shiv Insustries & Oil Mill,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 1870/2011/Bharatpur
N.K. Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision,Bharatpur ..... Respondent

Appeal No. 1872/2011/Bharatpur
S.V.M. Oil Mills Pvt,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur ..... Respondent

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Appeal No. 1873/2011/Bharatpur
Shiv Shakti Oil Industries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Spe. Circle-A,Bharatpur..... Respondent

Appeal No. 1877/2011/Bharatpur
Shree Bagpatia Oil Industries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner
Special Circle, Bharatpur ..... Respondent

Appeal No. 1878/2011/Bharatpur
Shree Suraj Oil Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer, Antivision,
Bharatpur ..... Respondent

Appeal No. 1948/2011/Bharatpur
Shree Lokendra Industries,
Bharatpur ..... Appellant
V/s
Commercial Taxes Officer,
Antivision, Bharatpur ..... Respondent

Appeal No. 753/2012/Bharatpur
A.D. Oil Industries,
Bharatpur ..... Appellant
V/s
Assistant Commissioner Circle-A, Bharatpur ..... Respondent

DB

Sunil Sharma, Member
Madan Lal, Member

Present :

Mr. Alkesh Sharma,
Advocate for the Appellants in the appeals listed herein below :
720/2011,722/2011,724/2011,721/2011,723/2011,732/2011,790/2011,
791/2011,793/2011,795/2011,797/2011,792/2011,794/2011,796/2011,798/2011,
817/2011,820/2011,842/2011,818/2011,837/2011,1070/2011,1082/2011,1084/20
11,1724/2011,1826/2011,1083/2011, 1085/2011,1725/2011,
1727/2011 &1828/2011
Mr. OP GUPTA,
Advocate for the Appellants in appeals
nos.1870/2011,1850/11,1948/11,1872/2011,1878/2011,1873/2011,
1877/2011,(CST:2006-07) & appeal nos.770/2011,835/2011, 836/2011
(CST: 2007-08)
Mr. C B Agarwal,
Advocate for the Appellant in appeal no. 753/2012
Mr. N.K.Baid,
Deputy Government Advocate for the Respondent

Date : 25/06/2015

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Appeal No. 720, 721,722,723,724,732,770,790,791,792,793,794,795, 796,797,798,817, 818,820,835,836,837,842,1070,1082,1083,1084,1085,1724,1725,1726,1727,1828,1850,1870, 1872,1873,1877,1878,1948/2011 & 753/2012

JUDGMENT

(1) By this order, a bunch of forty one appeals filed before the Rajasthan Tax Board (for short ," the Board ") under section 83 of the Rajasthan Value Added Tax Act, 2003 (for short, " the Act") against the appellate orders passed under section 82 of the Act by the Deputy Commissioner (Appeals), Bharatpur (for short, " the Appellate Authority ") in respect of the assessment orders of the appellant dealers for year 2006-07, and year 2007-08 passed by the Commercial Taxes Officers of Circle Anti Evasion, Bharatpur, Circle 'B' Bharatpur and, Special Circle, Bharatpur (for short, " the Assessing Authority") under section 9 of the Central Sales Tax Act,1956 (for short, " the CST Act ") read with sections 25, 55 and section 61 of the Act is being disposed of as the questions involved are common in all these appeals. The levy of additional tax, interest and penalty in the aforesaid impugned assessment orders upheld by the Appellate Authority has been challenged in the aforesaid appeals and relates to the dispute in issue of the genuineness of the C-forms furnished to the Assessing Authority, which the purchasing dealers registered with the Commercial Taxes Department (for short, "the CTD"), Bihar had made over to the appellants in respect of the interstate sales of edible oil. The summary of which is as follows:

Speial Circle Year-2006-07

S.No.	Appl.No.	Name of Dealer	Notc. dt.	Asstt.Dt.	Evaded Tax	Penalty	Interest	Total	Remarks
1	1828/11	National Industries Oil Mill, Bharatpur	20.07.10	20.07.10	821322/-	1642644/-	277196/-	2741162/-	9 of cst Act r/w 25,26,33
2	1872/11	S.V.M. Oil Mill Pvt.Ltd., Bharatpur	20.04.10	20.07.10	3283632/-	6567264/-	933440/-	10784336/-	u/s 24 r/w 9 of cst Act
3	1877/11	Shri Bagpatiya Oil Industries, Bharatpur	06.05.10	20.07.10	585411/-	1170822/-	131717/-	1887950/-	u/s 24 r/w 9 of cst Act
			Year 2007-08						
1	1083/11	Sh. Bhagpatiya Oil Industries, Bharatpur	15.03.10	29.03.10	556087/-	1112174/-	83413/-	1751674/-	u/s 24 r/w 9 of cst Act
2	1085/11	Kamla Oil Industries, Bharatpur	11.03.10	29.03.10	729761/-	1459522/-	109464/-	2298747/-	u/s 24 r/w 9 of cst Act
3	842/11	Sh.Heeralal Tel Udhyog, Bharatpur	15.03.10	29.03.10	442467/-	884934/-	66370/-	1393771/-	u/s 24 r/w 9 of cst Act
4	723/11	Sh. Bhagwati Udhyog, Bharatpur	15.03.10	29.03.10	2093620/-	4187240/-	314043/-	6594903/-	u/s 24 r/w 9 of cst Act
5	721/11	S.V.M. Oil Mill Pvt.Ltd., Bharatpur	15.03.10	29.03.10	352409/-	704818/-	52861/-	1110088/-	u/s 24 r/w 9 of cst Act

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6	817/11	Manish Oil Product, Bharatpur	11.03.10	30.03.10	1536650/-	3073300/-	230498/-	4840448/-	u/s 24 r/w 9 of cst Ac
7	724/11	Ram Industies, (Oil Section), Bharatpur	15.03.10	30.03.10	633620/-	1267240/-	95043/-	1995903/-	u/s 24,33 r/w 9 of cs Act
8	1084/11	Tika ram Industries, Bharatpur	11.03.10	30.03.10	1146729/-	2293458/-	172009/-	3612196/-	u/s 33,24 r/w 9 of CST Act
9	818/11	Vinayak Oil Industries, Bharatpur	16.03.10	29.03.10	428382/-	1185789/-	64257/-	1678428/-	u/s 24,33 r/w 9 of cs Act
10	732/11	National Industries Oil Mill, Bharatpur	11.03.10	31.03.10	1596804/-	3193608/-	239521/-	5029933/-	r/w 9 of CST Act u/ 24

CTO Circle-A Bharatpur Year 2006-07

S.No.	Case No.	Firm Name	Notice dt.	Astt. Date	Evaded Tax	Penalty	Interest	Remarks
1	753/11	A.D. Oil Industries, Bharatpur	11.03.10	24.07.10	700643/-	1401286/-	157645/-	u/s 25 r/w 9 of CST Act
2	1873/11	Shiv Shakti Oil Ind. Bharatpur	29.12.09	24.07.10	216236/-	432472/-	48653/-	u/s 9 of CST Act r/w 24,55,61
		Year-2007-08						
1	1070/11	Radika Oil Ind. Bharatpur	11.03.10	31.03.10	502433/-	1004866/-	150730/-	u/s 24 r/w 9 of cst Act
2	836/11	N.K. Products, Bharatpur	11.03.10	31.03.10	1432704/-	2865408/-	429811/-	u/s 24 r/w 9 of cst Act
3	1082/11	Shiv Shakti oil Ind. Bharatpur	11.03.10	31.03.10	463974/-	927948/-	139192/-	u/s 24 r/w 9 of cst Act
4	790/11	Choudhary Udyog, Bharatpur	11.03.10	31.03.10	1088562/-	2177124/-	326569/-	u/s 33,24 r/w 9 of cst Act
5	793/11	Sh. Madhav Ind. Bharatpur	11.03.10	31.03.10	214767/-	429534/-	64430/-	u/s 24 r/w 9 of cst Act
6	794/11	Raj Electric & Oil Mil, Bharatpur	11.03.10	31.03.10	326292/-	652584/-	97888/-	u/s 24 r/w 9 of cst Act

D.C. Commercial Tax,Bharatpur Year 2006-07

S.No.	Appeal No.	Name of dealer	Notice date	Asstt.Dt.	Evaded sales	Evaded Tax	Penalty	Intt.	Remarks
1	1726/11	S.Vrindawan Oil Products, Bharatpur	28.04.10	30.07.10	90851545/-	3634062/-	7268124/-	545109/-	u/s 25,26 r/w 9 of cst Act
2	1727/11	Triveni Electrodes, Bharatupur	28.04.10	30.07.10	43196134/-	1727845/-	3455691/-	374179/-	r/w 9 of cst Act u/s 25,26,33
3	1850/11	Shiv Industries & Oil Mill, Bharatpur	26.04.10	30.07.10	9273899/-	370956/-	741912/-	83465/-	r/w 9 of cst Act u/s 25,26
4	1725/11	B.R. Oil Mill, Bharatpur	28.04.10	30.07.10	9198144/-	367926/-	735852/-	82783/-	u/s 25,26 r/w 9 of cst Act
5	1948/11	Sh.Lokendra Industries, Bharatpur	26.04.10	20.07.10	48092621/-	1923705/-	3847410/-	493730/-	u/s 24 r/w 9 of cst Act
6	1724/11	Prem Oil, Bharatpur	28.04.10	30.07.10	42161738/-	1686470/-	3372940/-	379456/-	u/s 25,26,33 r/w 9 of cst Act
7	835/11	N.K. Industries, Bharatpur	10.03.10	29.03.10	51340336/-	2053613/-	4007227/-	308042/-	r/w 9 of cst Act u/s 24
8	1870/11	N.K. Industries, Bharatpur	26.04.10	20.03.10	6075080/-	243003/-	486006/-	54676/-	u/s 24,33 r/w 9 of cst Act
		Year 2007-08							
1	722/11	Sh.Goverdhan Oil Mill, Bharatpur	10.03.10	29.03.10	21736630/-	869465/-	1738930/-	130420/-	u/s 24 r/w 9 cst Act
2	797/11	Yogesh Industries & Oil Mill, Bharatpur	10.03.10	23.03.10	22290345/-	891614/-	1783228/-	133742/-	9 of cst Act r/ 24,33
3	720/11	Sh.Bhagwati Oil Industries, Bharatpur	10.03.10	29.03.10	45048607/-	1801944/-	3603889/-	270292/-	u/s 24 r/w 9 cst Act
4	796/11	S.Vrindawan Oil Products, Bharatpur	10.03.10	23.03.10	90851545/-	3634062/-	7268124/-	545109/-	u/s 24 r/w 9 cst Act
5	799/11	Sh.Laxmi Industries, Bharatpur	30.07.10	23.03.10	22288166/-	891527/-	1783054/-	133729/-	u/s 24 r/w 9 cst Act
6	1878/11	Sh.Suraj Oil Industries, Bharatpur	26.04.10	29.03.10	17335751/-	693430/-	1386860/-	104015/-	u/s 24 r/w 9 cst Act

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7	770/11	Shiv Industries & Oil Mill, Bharatpur	10.03.10	26.03.10	30373462/-	1214938/-	2429876/-	182241/-	9 of cst Act r/v 24,33
8	795/11	B.R. Oil Mill, Bharatpur	10.03.10	23.03.10	14552266/-	582091/-	1164182/-	87314/-	u/s 24 r/w 9 o cst Act
9	837/11	Sh. Lokender Industries, Bharatpur	10.03.10	29.03.10	94923119/-	3796925/-	7593850/-	569539/-	u/s 24 r/w 9 o cst Act
10	792/11	Prem Oil, Bharatpur	10.03.10	23.03.10	26711050/-	1068422/-	2136884/-	160226/-	u/s 33,24 r/w of cst Act
11	791/11	Triveni Electrodes, Bharatpur	10.03.10	23.03.10	73836607/-	2953464/-	5906928/-	443020/-	u/s 33,24 r/w of cst Act
12	820/11	Sh. Suraj Oil Industries, Bharatpur	10.03.10	29.03.10	17335751/-	693430/-	1386860/-	104015/-	u/s 24 r/w 9 o cst Act

(2) Of the aforesaid appellants, certain appellants had been taking benefits of the exemption from tax under Incentive Schemes in the year 2006-07 and year 2007-08 , which as per record before us are listed below :

1- M/s N.K. Industries Bharatpur

2- M/s Prem Oil, Bharatpur

3- M/s Treveni Electrodux, Bharatpur

4- M/s N.K. Product, Bharatpur

5- M/s Choudhary Udog, Bharatpur

6- M/s National Ind. & Oil Mill, Bharatpur

7- M/s Vinayak Oil, Bharatpur

(3) The facts necessary to appreciate the controversy are that the Assessing Authority inveighed the appellants with having taken undue benefit of the concessional rate of tax against the inter-State sales of mustard oil effected on strength of invalid C-forms and consequently levied differential central sales tax (for short, " the CST ") on the impugned turnover in the aforesaid assessment orders imposing thereon interest under section 55 of the Act and penalty under section 61 of the Act at double the amount of the CST evaded, the appellants' claim of receiving sales considerations through account payee demand drafts and navigating oil dispatches from Bharatpur to various towns in Bihar with necessary statutory Forms- VAT 49 and the relevant GRs, notwithstanding.

(4) Aggrieved by the orders of the Assessing Authority, the appellants challenged the tax, interest and penalty levied in the aforesaid assessment orders in the appeals filed before the Appellate Authority who upholding assessment orders however disallowed the appeals. Aggrieved by these orders, the appellants filed above appeals which have been taken up for consideration by the Board.

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(5) The appellants denied the furnishing of bogus C-forms to the Assessing Authority in respect of the aforesaid inter-State sales as unfounded and untrue accusation for reason of having transacted business with the bona fide purchasing registered dealers with belief in the infallibility of the declaration forms-C given by them and which, as claimed by the appellants, could not be demolished in the face of intense investigations made in this regard by the respondent Assessing Authority.

(6) An enquiry made by the officials of the CTD, Rajasthan in collaboration with their Bihar counterparts to ascertain veracity of the C-forms called in question, disclosed startling fact of the aforesaid C-forms having never been issued to the registered purchasing dealers by the competent authorities of appropriate circles in Bihar. As a sequel to it, the respondent Revenue charged the appellants with offence of furnishing fake and bogus C-forms to avail benefit of concessional rate of central sales tax. The Assessing Authority was convinced that the appellants could not establish validity of C-forms in question, as it had been spoilt by their bogus nature.

(6A) Coming to the facts extracted from the aforesaid appeals, those of M/s. A.D. Oil Industries, (appeal number 753/ 2012) , and M/s SVM Oils Private Ltd., Bharatpur (appeal number,721/2011) along with their written submissions and 'points of arguments' included, it would be in fitness of things to say that they had got a common factum. A summary of which is reproduced herein below:

(7) The main plank in memo of written submissions and arguments in appeals nos. 753/ 2012 and 721/2011 was characterized by the narrative that *sale of mustard oil to various dealers of Bihar was effected through "Dalals" (brokers) operating on behalf of the buyers who would procure purchase orders from the outside state purchasers, purchase oil for them and also hand out declarations to the appellant sellers who had no control over the sellers and having no opportunity of any enquiry etc. about the purchasers relied only upon the information contained in these Declaration forms 'C'. For illustration, in the course of enquiry*

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verification of the C-forms by the CTD, Rajasthan it came to light that six 'C' forms in the aforesaid case of M/s. A.D. Oil Industries, were not issued by the concerned assessing circles of the CTD, Bihar to the purchasing dealers. As sequel to it, a case of evasion of Central Sales Tax (for short, " the CST") having been made out against the appellant selling dealers resulted in rejection of the impugned 'C' forms ,followed by levy of the differential tax and penalty on the aforesaid inter State turnover.

(8) The action of the Appellate Authority in overlooking grievance of the appellant on denial of access to the incriminating documents well on time, which the Assessing Authority had also relied upon in the past while completing assessments, was also railed at. It was alleged that the Assessing Authority simply glossing over it took no more pains than supplying a formal list of the 'C' forms considered as bogus declaration forms, which by no means could be accorded status of a complete inspection and verification report; and, apart from that, the copies of the documents on which this report was based, were not supplied, in spite of being applied for. Reliance was placed on the case of the Hon'ble Madras high Court (106 S.T.C. 283) in this matter.

(9) Also, an objection was raised in the aforesaid memos that the Assessing Authority turned down demand for cross examination of the officials of the relevant circles of Bihar who had reportedly declined having issued 'C' forms to the purchasers.

(10) It was challenged that the Assessing Authority passed the impugned assessment orders under section 25 of the Act in the aforesaid case which was barred by expiry of the time limit of six month starting from the date of making out case as prescribed under sub section (3) and sub section (4) thereof with attendant Explanation thereto and which in present case, according to him, fell on June 30, 2010.

(11) Similarly in another case, the Assessing Authority issued show cause notice dated July24, 2010 under section 24 of the Act calling upon the appellant dealer to explain as to why the additional tax, interest and penalty

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not be levied in his case, however the assessment order was finalized under section **25/26** of the Act. In this connection, the aforesaid appellant took plea that an assessment could not have been re- passed under section 24 of the Act afresh, if all the quarterly assessments for the year 2007-08 had been made under section **23/24** of the Act even on different dates since those were in themselves full fledged assessment orders for reason that the Act had no statutory enactment in place for provisional orders. In this regard, reliance was placed on the judgment of M/s Classic & Co. V/s D. C., reported in 124- STC- 501 (T.N.T. S T.).

(12) The above appeal memo voiced grievance in regard to the preliminary objections raised by the appellant which had not been decided by the Assessing Authority before the impugned assessment orders were passed under two different sections, captioned as " under "25/26 of the Act ", which allegedly amounted to invoking two different provisions under the Act to pass the same assessment order again under section 25 of the Act in contradiction to section 90 of the Act which forbade that " no assessment made and no order passed by any officer appointed or the authority constituted under this Act shall be called into question, except as provided in this Act." In present case, the Assessing Authority was not having necessary jurisdiction to reopen or review the aforesaid assessment orders earlier passed under Section 24 of the Act.

(13) Moreover, the impugned assessment order, as assailed in the aforesaid memo, could not be treated as having been passed under Sec. 26 of the Act in view of the Explanation appended to section 26(1) of the Act informing that "the assessment under this section would not include the part of business which was under assessed or had already been assessed to tax or deemed to have been assessed under the provisions of this Act". Similarly, the impugned assessment orders herein could not have been reopened to be re-assessed for the whole year, for there was no 'C' form related dispute in the first quarter of the year.

(14) An objection was raised therein that the Assessing Authority turned down demand for cross examination of the officials of the relevant circles of Bihar who reportedly declined having issued 'C' forms to the purchasers.

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(15) It was also grumbled that though the copy of enquiry report was provided, but it being an incomplete probe the report offered no answers as to how and from which sources the concerned oil purchasing dealers in the State of Bihar managed the impugned 'C" forms, if the same were not issued to them. The rulings in this regard relied upon were mentioned as under:

(i) (2002) 2-TUD-274 (RTB) C.T.0 V/s. Chopra Chemical

(ii) (2003) 16- STT-13 (RTB) A.C. Anti Evasion V/s. India Flour Mills.

(iv) (1987) 66- STC -292 (SC) Kerala Glass Factory V/s. STT

(v) (I977) 39-STC- 478 (SC) State of Kerala V/s. Shadul Yusuf ; (1996) 18- STC- 222 (SC) State of Madras V/s. Radio and Electricals Ltd.

(16) In this regard, the list of rulings mentioned in the draft of 'points of arguments' was as follows:

(i) (1995) 17- RTJS-203 (RTB) CTO V/s. Sita Ram & Sons

(ii) (2001)26-TW- 243 (RTB) C.T. 0 V/s. Kohinoor Industry

(iii)(2002) 2-TUD- 274 (RTB) C.T.O. A.E. V/s. Chopra Chemicals .

(iv)(2006) 148- STC- 14 (RHC) A.C.T.O. V/s White Marble House

(v) (2011) 37- VST- 94 (Mad) Sastha Enterprises V/s. State of Tamilnadu

(vi) (2013) 59- VST- 01 (Delhi) Milk Food Ltd. V/s . Commer

(17) On Penalty, it was emphasized in the aforesaid memos that all the transactions were recorded in the account books of the appellant and the 'C' forms given to the aforesaid appellant by the purchasers were received bona fide having no knowledge that those were false or forged ones. It was not proved or established that the appellants had any collusion with the purchasers of Bihar in furnishing tainted C-forms to the Assessing Authority. Therefore there was no ground to levy penalty in the aforesaid cases. Penalty too had been levied double the tax @ 4% instead of at double the amount of differential tax so evaded, that is . @ 2% only. References made in this regard were as follows:

(i) 1989) 74- STC- 288 (RHC) A.C. T. 0 V/s. Sojat Lime

(ii) (1985) 97- STC- 238 (RHC) C.T.O. V/s. Kumawat Udyogiii)

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(iii) (2002) 2- TUD- 274 (RHC) C. C.O. V/s. Chopra Chemicals

(iv) (2009) 23-VST-249(SC) Shree Krishna Electrical V/s State of Tamilnadu

(v) (2009) 26- VST- 362 (Mad). State of T. N. V/s. Indian Cements .

(vi) (2007) 18- TUD- 139 (RHC) C. T.O. V/s. Kohinoor Industries .

(18) In matter of the interest, its imposition under section 55 of the Act was opposed on the grounds of it having been levied for the period prior to the quantification of tax, either by returns or by an assessment order despite the aforesaid appellant having deposited entire amount of tax becoming payable as per returns.

(19) Therefore, the interest levied by the Assessing Authority was illegal, and improper as no tax was due or payable. Even the calculation of interest for 45 months was wrong and had no basis in spite of the fact that the quarterly excess input tax refunds were granted in due course of time, i.e. for periods of the first quarter on 21-1-2007, the second quarter on 21-1-2007, the third quarter on 2007-08 and the fourth quarter on 26-2-2008. The appellants deposited tax as collected by them and had not committed any default in payment of tax as per returns filed. The interest therefore was not attracted on the additional tax liability, if any, assessed. The Assessing Authority charged interest without considering the binding judgments and without passing speaking orders. Interest is payable under section 55 of the Act from the day "immediately succeeding the date specified for such payment". Under the Act two dates were specified i.e. along with Returns on the basis of Returns and within 30 days of the communication of assessment orders. Appellant did not commit any default in making payment on the basis of returns. Thus, no interest could be charged for the period prior to assessment orders.

(20) The list of the decisions quoted in the aforesaid written arguments against the imposition of interest was as follows:

(i) (1994) 94- STC- 422 (SC) M/s. J. K. Synthetics Ltd V/s. C. T. O.

(ii) (2001) 122—STC- 410(SC) M/s. Maruti Wire Ind. Pvt. Ltd. V/s C. T. O

(iii) (2005) 141- STC- 12 (SC) EID Parry (India) Ltd . V/s . A. C

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(21) It was submitted that since the appellants had recorded all the transactions in their books of accounts, the penalty provisions under section 61 of the Act were not attracted; however, the Assessing Authority grossly erred in law and facts of the case and imposed penalty without considering the binding judgments on the issue before passing non-speaking orders. The case laws in this connection mentioned were as follows : (1) 93 TC 346 (Rajasthan) 23 VST 249 (S.C.) (2)23 VST 249 (S.C.), (3) 148 STC 14 (Rajasthan) (4)18 TUD 139 (Rajasthan) (5) 61 STC 393 (Rajasthan) (6) 89 STC 494 (Kerala) (7)2 TUD 274 (RTB). 8) 89 STC 494 (Kerala) 2 TUD 274 (RTB).

(22) Arguing for his appellants in the aforesaid appeals, at the outset, Mr. Alkesh Sharma, learned counsel for the appellants, drew notice of the bench towards a logical postulate that once an assessment order had been passed under a particular section it could not be passed again under the same section of the Act and emphasized that a bare perusal of the impugned assessment orders would reveal that the quarterly assessment orders were previously passed under section 9 of the CST Act read with section 24 of the Act for all four quarters of the year by the regular assessing authority.

(23) Advancing argument in this regard, the learned counsel said that the Assessing Authority, in his contemporaneous official capacity, being only an anti-evasion authority and not holding an office invested with the jurisdiction and powers of a court of appeal, had herein assumed unauthorized jurisdiction under garb of the dispenser of justice to stub out alleged evasion of tax passing assessment orders afresh arbitrarily for the entire year under the same sections: 24 of the Act read with 9 of the CST Act. Mr. Alkesh Sharma, learned counsel for the appellants, further submitted that in cases where the assessment orders had been passed prejudicial to the interest of the State, the only proper legal remedy lying with the department was to invoke revision jurisdiction, and powers to this effect were conferred only on the Commissioner by section 85 of the Act. In cases where assessment orders had been passed with necessary deductions therein allowed by the assessing authority, another officer in a different capacity could not make it a case of alleged evasion of tax because they could thereafter only be screened on a stage quite different from the one whereupon such an act of passing the impugned erroneous orders was played or an order prejudicial to the interest of the State featured.

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(24) Mr. Alkesh Sharma and Mr. OP Gupta, learned counsels for the appellants, emphasized that in the light of the aforesaid rulings the second assessment under the same section, in present cases under section 24 of the Act ,was statutorily barred by mischief of the section 90 of the Act which read that "no assessment made and no order passed by any officer appointed or authority constituted under this Act, shall be called into question, except as provided in this Act". The Assessing Authority had therefore no jurisdiction to reopen or review an assessment order once passed under section 24 of the Act with another order which was also brought about under the same section.

(25) The decision of the Hon'ble Supreme Court in case of Hukum Chand Shyam Lal Vs. Union of India, reported in AIR 1976 SC 789, was cited as having held that "it is well settled that where a power is required to be exercised by a certain authority in a certain way. It should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice".

(26) They contended that the Appellate Authority passed the impugned appeal orders failing to appreciate legal breach in action of the Assessing Authority in it that the impugned assessment orders were passed without it having been invested with jurisdictional authority of law necessary under section 24 of the Act and therefore the impugned orders of both the lower authorities were per se arbitrarily illegal and deserved to be set aside.

(27) In the course of arguments, Mr. Alkesh Sharma, learned counsel for the appellants, and Mr. OP Gupta, his learned colleague, expressing views in similar vein, drew the attention of the bench that the enquiry report on the disputed C-forms prepared by the CTD, Bihar confined itself to the agenda of probe limited to circle specific issuance of C- forms and therefore was an inconclusive document and, besides amongst other things, the CTD, Bihar itself had sought certain additional information from the CTD, Rajasthan like mode of delivery of the mustard oil in Bihar, names of the concerned transport carriers, extensive

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details of the selling dealers of Rajasthan and modus operandi of payments against sales, etc., in wake of the ongoing enquiry by the CTD, Rajasthan so as to go to the whole hog of the alleged racket of bogus C-forms, but no such further communication was sent or information made available by the CTD, Rajasthan to its Bihar counterpart.

(28) Moreover, the verification enquiry report received from Bihar did not allege 'C' forms in dispute to be of either false or forged nature. Assailing that no enquiry worth the name had been made from the purchasing dealers as was clear from the enquiry report, the learned counsels for the appellants further objected that this rundown enquiry report itself did not touch upon what action, if any, was initiated by the Bihar government against the errant purchasing dealers. At the most, It was but an ad interim report as apparent from the covering letter, No. 565, dated: September 9, 2009 from the Commissioner-cum Chief Secretary, Bihar, addressed to his Rajasthan counterpart whereby the former had sought some other details for further verification in the C-form matter they were seized with. Therefore, this enquiry report could not be used by the Assessing Authority as evidence in creating liability against the appellant dealers.

(29) Moreover, the impugned assessment orders finalized by the Assessing Authority were framed on the outlines of a hazy evidence derived from a clueless report of the CTD, Bihar alluding to the C-forms in question as having never been issued by the appropriate assessing circles of the CTD, Bihar but keeping a discreet silence on the burning issue whether those (C-forms) were issued at all from any other circles of the CTD, Bihar; or else, they were forged or false ones.

(30) Mr. Alkesh Sharma, learned counsel for the appellants, contended vigorously that the' C' forms called in question were stamped with seal of authentication of the department, and could not be therefore rejected summarily and the sellers made to suffer on this account. He endorsed that the bone of contention in the aforesaid appeals was that C- forms furnished by the appellants were not considered genuine by the Assessing Authority but was categorical that the Assessing Authority could not prove the impugned C-forms to be as false or forged ones.

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(31) Mr. Alkesh Sharma, learned counsel for the appellants, argued that a similar matter came up for consideration before the Andhra Pradesh High Court in case of **United Steels and Allied Industries Vs, State of Andhra Pradesh, reported in 70 STC 115,** wherein certain dealers of Bombay whose registration certificates stood cancelled had issued C forms to the dealers of Andhra Pradesh which were rejected by the assessing authorities of Andhra Pradesh. The Hon'ble High Court in these circumstances held that "it is one thing to say that the purchasing dealer's certificate of registration was cancelled and quite another to say that such certificates have been surrendered and the petitioner had entered into sale transactions with dealers who did not physically possess the certificate of registration. There was no indication in the notices issued to the petitioner that the parties whose certificate of registration had already been cancelled had surrendered the certificate". The Hon'ble High Court further held that "the petitioner having bona fide collected the C Forms and claiming concessional rate of tax on their basis had discharged the initial onus that lay on it to show that interstate sales were covered by C Forms. The assessing authority was bound to admit the claim."

(32) Similarly, the Madras High Court in the case of **Agfa-Gavert Vs. State of Tamil Nadu,** reported in 123 STC 108, held that "there was no material to show that a notification had been published in the gazette of Andhra Pradesh making it known to the public that the certificate of registration of the registered dealers whose C forms had been utilized by the purchasing dealers, had been cancelled and also that the registered dealers had surrendered unused C- forms to the concerned authority. There was also no material pointing out that such cancellation of registration certificates of those dealers had been duly intimated to the State Government of Tamil Nadu for due publication in the official gazette. In such state of affairs there was no possibility for the dealers to have knowledge of the cancellation of registration certificates of those dealers whose C forms have been misused by their purchasing dealers of Andhra Pradesh. Such being the case the dealer could not be deprived of the benefit of concessional rate of tax."

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(33) Mr. Alkesh Sharma and Mr. OP Gupta, learned counsels for the appellants advanced arguments further that the DB of the Rajasthan Tax Board in the case of CTO Vs. Chopra Chemicals, reported in 2 TUD 274, held that without a detailed proper enquiry and in the absence of opportunity of cross examination no liability could be fastened on the dealer. The Board further held that it was not clear as to what action had been launched against the purchasing dealer of the respective States and that no opportunity to cross examine the Bombay Officer was given to the dealer. Similar view was taken by the Rajasthan Tax Board in the case of Khetawat Industries Vs. Assistant Commissioner , reported in 5 Tax update 262.

(34) Mr. Sharma and Mr. Gupta, learned counsels for the appellants, submitted that a similar matter had been thoroughly examined by the Hon'ble Madras High Court in the case **M/s Sastha Vs. Appellate Authority, Commissioner (CT) II, F&C, Chennai and another, reported in 37 VST 94,** wherein the petitioner who had made transit sales but was disallowed the exemption granted in respect of transit sales mainly on the ground that the C Form obtained from the purchaser and produced by the dealer, was on subsequent verification found to be not genuine as it was not issued by the assessing authority concerned. On writ petition, the Hon'ble High Court held that "the exemption allowed to the dealer in the original assessment order was based on the E1 form obtained from the original seller and C form obtained from the actual purchaser of the goods. Once the transaction of transit sales was over, the dealer had no control over the purchaser and he had no occasion to verify the C- forms produced from the side of the purchaser. The dealer had only submitted the document as given to it by the purchaser. Unless based on concrete material, it was found out that the transaction was not true or the dealer was party to the act of fraud said to be committed by the purchaser, the question of disallowing the exemption already given to the dealer for the transaction actually effected between the parties, did not at all arise. It was for the department to proceed against the purchaser-dealer for any contravention of law in the manner known to law and no penal action was warranted against the selling dealer".

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(35) It was further submitted that a similar matter had come up for consideration before the Hon'ble Karnatak High Court in the case of **M/s Bell Ceramics Limited Vs. Deputy Commissioner of Commercial Taxes** reported in 38 VST 388 wherein it held that. when the registered dealer, who was the purchaser, had issued C forms to the assessee, it was not for the assessee to actually find out as to whether the registered dealer was in existence on the date when the sales were effected. .. The petitioner could not be found fault with since it was the duty of purchaser to have informed the petitioner about its ceasing to be in existence and thereby not issuing C forms. The petitioner had utilized the C forms issued by the registered dealer who was a purchaser based on the fact that the said purchaser had been in existence and had validly issued the said forms. Therefore, the authorities could not have held that the petitioner had utilized the invalid C forms in order to claim concessional rate of tax. Moreover, in the absence of there being any proof that the purchasing dealer had ceased to exist on July 1, 2002 and that the said fact was within the knowledge of the petitioner herein in the absence of such circumstances and further the authorities had to levy tax at the concessional rate of four per cent on the basis of the C forms relied upon by the petitioner. The proceedings initiated to levy penalty were also not in accordance with law".

(36) Mr. Alkesh Sharma, learned counsel for the appellants, strongly contended that the Revenue's view on the non-verifiable status of the statutory forms- C furnished by the purchasing dealers to the appellants on pretext of their supposed false origin in context of the same having not been found issued to them by the competent authorities of the CTD, Bihar was no more than a flaunted aberration. He said that no notification was issued by the State Government of Bihar nor was one ever conveyed or published by the State of Bihar or Rajasthan in official gazette or a newspaper that the impugned Declaration Forms -C were bogus or fake ones. Therefore, the appellants rightly charged the inter-State sales at the concessional rate of 2 per cent or 1 per cent as the case may be on the strength of the C-forms in question, He argued that the aforesaid assessments orders and the impugned appeal orders of both the lower authorities ,i.e., the Assessing Authority and Appellate Authority respectively were per se arbitrary, illegal and passed not having any authority of law.

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(37) They placed reliance on the case of Deputy Commissioner of Agricultural Income-tax and Sales Tax Versus M/s **Dhanlaxmi Vilas Cashew Company ,reported in** (1969) 24 STC 491, wherein the Honble Apex Court, interpreting the provisions of Section 15 (1) of the Kerala General Sales Tax Act which provided Revision by the Commissioner, held that "the revisional jurisdiction under section 15(1)(i) of the Kerala General Sales Tax Act is quite different and separate from the one created under rule 33 relating to tax escaped turn over and that rule 33 which confers power to assess escaped turnover is normally to be exercised in matters de hors the record of assessment proceedings and that the revisional jurisdiction under section 15(1)(i) would be restricted to the examination of the record for determining whether the order of assessment was according to law". The Hon'ble Supreme Court therefore held that "the Deputy Commissioner had jurisdiction u/s 15(1)(i) as this was not a case of escaped turnover." The Hon'ble Apex Court postulated that the Revisional Jurisdiction u/s 15(1)(i) is quite distinct and separate from the one created u/r 33 to tax escaped turnover.

(38) Mr. Alkesh Sharma, the learned counsel for the appellants, argued that the Hon'ble Supreme Court in the case of **State of Kerala Vs. K.E. Nainan,** reported in 26 STC 251, reversing the decision of the High Court held that "the question which the Deputy Commissioner had to consider was one of the legality, propriety and regularity of the exemption of the turn over granted under the licence in respect of auction sales. This fell strictly within the purview of section 5(1) of the Act and there was no question of any action being taken under rule 33 on the ground that there had been escapement of turn over."

(39) The decision of the Andhra Pradesh High Court in the case of **State of Andhra Pradesh Vs. Ratna Saree Box Makers,** reported in (1989) 75 STC 82, was referred to, wherein it was observed that "while the power of revision could be exercised by looking into the assessment record only, the power of reopening an assessment had to be exercised only on the basis of material de hors the record. If the power of reopening an assessment could be exercised even in regard to turn over which was already considered at the time of assessment, then there would not be any conceivable cases for revision.

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(40) The mere fact that deduction of exemption was wrongly allowed does not give power to reopen the assessment under section 14(4), in the absence of material de hors the assessment record disclosing escaped turn over. Where a perusal of the assessment record itself shows a deduction or exemption wrongly granted it is for the revisional authority to correct it by exercising power under section 20 of the Act. Mere change of opinion cannot be a basis for reopening an assessment under section 14 (4) of the Act."

(41) On penalty, learned counsel for the appellants, contended that the assessment orders once completed attained finality and could not be reopened or reviewed on fulcrum of an incomplete and unverified report obtained from the authorities of Bihar Government lacking in verification of contents from the purchasing dealers. Therefore, the levy of penalty by the Assessing Authority on the basis of the fact finding report of the authorities of the CTD, Bihar was an erroneous action and the wrong was repeated by the Appellate Authority by confirming the impugned appeal orders.

(42) Advancing arguments further, learned counsel for the appellants, Mr. Sharma, argued that there was no ground to slap unwarranted penalty under section 61 of the Act on the appellants, for the Revenue had miserably failed in establishing in instant matters, even if for a moment that the impugned C- forms had been fake, or that a case of collusion between the appellant selling dealers of Rajasthan and the purchasing dealers of Bihar with mala fide intent to evade tax had not been proved by the respondent Assessing Authority.

(43) Appearing on behalf of the appellant assesses, Mr. Alkesh Sharma and Mr. OP Gupta, learned counsels averred that the Hon'ble Supreme Court in the case of M/s Cement Marketing Company of India Limited Versus Assistant Commissioner of Sales Tax, reported in (1980) 45 STC 197, opined that " belief entertained by the assessee that it was not liable to include the amount of freight in the taxable turnover could not be said to be mala fide or unreasonable but it was a bona fide belief and therefore, the penalty could not be imposed on the assessee under section 43 of the Madhya Pradesh Act and section 9 (2) of the Central Act".

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(44) learned counsels for the appellants argued that the Hon'ble Rajasthan High Court in the case of ACTO Vs. Kumawat Udyog Limited reported in 97STC 238 ~~the Hon'ble Rajasthan High Court~~ while dealing with the same provisions held that section 16(1)(e) of the RST Act, 1954 was applicable only when a dealer had concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein. The word "concealed" implied the mental element of the dealer and simply because the assessing authority made the assessment at a figure different from that returned, this would not give him jurisdiction to levy penalty under section 16(1) (e). Prima facie, an entry in the books of accounts disclosing the correct nature of the transaction was sufficient to conclude that no offence had been committed, unless the assessing authority apart from giving a finding in the assessment order proved by some other evidence that failure to disclose particulars in the return was because of deliberate action by the dealer to evade tax. If an entry existed in the books of accounts and the matter related only to an interpretation of the nature of transaction and the law relating to its taxability the authorities would not be justified in levying the penalty.

(45) Assailing the Revenue for wrong levy of penalty in the present cases, Mr. Sharma and Mr. Gupta cited rulings discussing probable grounds for levying penalty and quoted an excerpt from decision in the case of CTO Vs. M/s Sojatline Company ,reported in (1989) 74 STC 288, wherein relying on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. Anwar Ali, reported in (970) 76 ITR 696, the Hon'ble Rajasthan High Court set out that "mere rejection of the explanation of the assessee as false does not automatically attract penalty in such a situation and before the penalty can be imposed it must be held that the assessee had consciously concealed the particulars or had deliberately furnished inaccurate particulars".

(46) It was further contended that the Hon'ble Rajasthan High Court in case of Lord Venkateshwara Caterers Vs. CTO Anti Evasion, reported in 19 Tax update 85, had opined that "it is not even a case of the revenue that these transactions were not recorded in the book s of accounts maintained by the

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assessee. It is also not the case of revenue that he had filed a return claiming the said turn over to be exempt from the sale and contested this position and that such imposition of penalty has to be preceded by a reasonable conclusion arrived at by the concerned authority that there is a conduct contumacious or guilty intention on the part of the subjector assessee in not paying the tax. Such reasonable conclusion can be arrived at only after complying with the principle or natural justice and therefore, considering the facts and circumstances of the case set aside the penalty which was so imposed by the assessing authority under section 65 of the RST ACT, 1994", which, they said, was para material to section 61 of RVAT Act and therefore applicable in present cases.

(47) Reliance was placed on the judgment of the Hon'ble Rajasthan High Court in the case of Commercial Taxes Officer Vs. M/s Rajdhani Wines, reported in 87 STC 362 . It was argued that the Hon'ble Patna High Court in the case of Reckitt Benckiser (India) Limited Vs. State of Bihar, reported in 137 STC 537. held that provisions for levy of penalty were applicable where escaped turnover was discovered before assessment and applied only to cases where the dealer concealed sales or purchases or particulars thereof with a view to reducing his liability; and, asserted that similar view was taken by the Rajasthan High Court in cases reported in 74 STC 288, 93 STC 239 and 97 STC 238. They submitted that their submissions also got support from 78 STC 58, 1986 RTC 53, 83 TBR 40, 48 STC 466, 220 ITR 558 and 2000 UPTC 471.

(48) **Mr. Alkesh Sharma** and Mr. OP Gupta, learned counsels for the appellants, vigorously contended that the Hon'ble Supreme ~~High~~ Court in the case of Shree Krishna Electricals Vs. State of Tamil nadu and another, reported in (2009) 23 VST 249-251, at its para 7 held that "so far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's books of accounts. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealers' turn over disallowing the exemption penalty cannot be imposed. Penalty levied stands set aside".

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(49) Mr. Alkesh Sharma and Mr. OP Gupta, the learned counsel for the appellants, argued that the Hon'ble Supreme High Court in the case of Commissioner of Income-tax Vs. M/s Reliance Petro Products Private Limited reported in 322 ITR 158 held that "the situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its return. The Tribunal as well as the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and therefore, the appeal filed by the Revenue has no merit as such appeal is dismissed".

(50) They argued that in view of the above judgments the penalty was per se improper and bad in law in the impugned assessment orders and the Appellate Authority erred in upholding the same. Both the orders therefore, deserved to be set aside.

INTEREST

(51) As regards the issue of interest, Mr. Alkesh Sharma and Mr. OP Gupta, learned counsels for the appellants were emphatic that the Appellate Authority had further erred in not setting aside the levy of interest and remanding the case to levy the interest after adjusting the amount which had been deposited by the appellants. They submit that in view of the fact that the levy of additional tax itself was illegal the question of levy of interest did not arise. Moreover, it was settled proposition of law that interest could be levied only from quantification of tax as held in 94 STC 422. It is further submitted that a D.B of the Rajasthan Tax Board in its judgment dated 14.5.2002 in the cases of M/s Grindwell Norton Limited Vs. CTO and M/s Raghuveer India Ltd. Vs. CTO Anti Evasion2, H.Q. Jaipur have also taken the above view that unless tax is quantified interest cannot be levied. It is further submitted that the Hon'ble Supreme Court in the case of M/s Maruti Wire Industries Pvt. Ltd. Vs. Sales Tax Officer reported in 122 STC 410 applying the principle laid down in the case of M/s J.K. Synthetics Ltd. Vs. CTO reported in 94 STC 422 have held that " in view of the law laid down by the Constitution Bench we are clearly of the opinion that the liability of the assessee appellant to pay sales tax could have arisen either on

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return of turn over being filed by way of self assessment or else on an order of assessment being made. A failure to file return of taxable turn over may render the assessee liable for any other consequences or penalty action as provided by law but cannot attract the liability for payment of penal interest under sub section (3) of section 23 of the Act on the parity of reasoning that if a return of turnover could have been filed on due date than the tax as per return would have become due and payable on that date". The Apex Court therefore, held that the tax payable or tax due was that amount which became due ex-hypothesis on the turn over and taxable turn over shown in or based on the return or as to which an order of assessment had been made. It was further submitted that the Hon'ble Supreme Court in its decision in the case of M/s E.I.D. Parry (India) Limited Vs. Assistant Commissioner of Commercial Taxes reported in 141 STC 12 held that "the Constitution Bench in J.K. Synthetic Limited case (1994) 4 SCC 276 (1994) 94 STC 422 accepted the minority view and over payable only as per the returns. It was held that if incomplete or incorrect returns were filed it was open to the assessing officer to provisionally assess and make a demand. If that was not done, interest could not be levied on the footing that in a final assessment it was found that the returns had been incorrect". Therefore, the impugned orders are perse arbitrary, illegal, improper and bad in law. SB S.T.R. No. 778/2002 (RHC)

(52) They further argued that under section 55 of the RVAT Act interest was payable from the day "immediately succeeding the date specified for such payment". Under the Act two dates were specified i.e. along with returns on the basis of returns and within 30 days of the communication of assessment Appellant has not committed any default in making payment on the basis of returns. Thus, no interest can charge for the period prior to assessment.

(53) Appearing on behalf of the respondent Revenue, Mr. NK Baid, began arguments on the note that the scandal of fake C-forms was was exposed on the basis of precise information obtained by the authorities of the CTD, Rajasthan from the authorities of the CTD, Bihar and scotched apprehensions expressed by the counsels for the appellants that the enquiry report lacked coherence and was

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not a complete report. He vociferously asserted that there existed no gaping holes in the enquiry report which was an unassailable one in context of the precise information given by it on the status of C-forms in question.

(54) To the challenge posed to the authenticity of the enquiry report on C-forms submitted before the Assessing Authority, Mr. NK Baid said that suffice it would be to say, that no further probe was required nor therefore undertaken in collaboration with the assessing authorities of the purchasing dealers in Bihar by the authorities of the CTD, Rajasthan, unilaterally or jointly, because when a self revelatory report from authorities of the CTD, Bihar about such C-forms having not been issued to the purchasing dealers, had already been provided by them to the CTD, Rajasthan, there was no locus standi to pursue the matter further at their end. This straight forward report put a lid firmly on the scope of any further enquiry needed in the matter from the side of the authorities of the CTD, Bihar. Now, whatever action was to be taken in the matter of impugned C-forms was the sole responsibility of the Assessing Authority of the CTD, Rajasthan which on their part was duly discharged levying additional tax, interest and penalty on the erring appellant dealers.

(55) Advancing arguments on behalf of the respondent Revenue learned counsel Mr, NK Baid, drew attention of the Board that his learned colleagues made raucous noises on the enquiry report for its being incomplete and inconclusive, perhaps forgetting that once the Bihar authorities had firmly ruled out issuance of the C-Forms in question from their records, the only legitimate and valid course open to the Assessing Authority was that he must consider them fake and bogus C-forms , but only after affording opportunity to the appellant dealers to give their version on the spurious nature of the C-forms in question, and, after considering it, if satisfied that the C-forms tendered were not valid and appropriate, the Assessing Authority was obliged to proceed ahead in accordance with the provisions of assessments as laid down in the Act to levy additional tax, interest and penalty. The Assessing Authority logically issued detailed notices and after giving the appellants an opportunity of being heard and going through

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their replies was convinced that the impugned C-forms emanating from unidentifiable unknown source were bogus and fake inasmuch as taxation purposes were concerned.

(56) Mr, NK Baid, learned counsel for the respondent Assessing Authority argued that an analysis of the cases on hand brought it out clearly that the facts in the present cases were different from those appearing in the decisions of the Hon'ble High Courts and Hon'ble Apex Court (supra) cited by the appellants in their support . The respondent Assessing Authority in the instant appeals did not make out a case where any such dealers of Bihar whose registration stood cancelled had yet issued C-forms called in question; or, that they had at any point of time surrendered the C forms issued to them by their competent authorities. Nor was it a case where the purchaser dealers furnishing impugned C-forms were insinuated that they were physically never in existence for business purposes over there or had wound up their business or were non est on the dates when the impugned C-forms were reportedly made over by them to the appellants or that their registration certificates had been cancelled prior to the impugned inter-State transactions had taken place.

(57) Mr. Baid, learned counsel for the respondent Assessing Authority argued that the appellants were silent on the identities, addresses, and whereabouts of the mysterious unknown intermediaries, called 'dalaals' in common parlance, who in the version of appellants themselves, handled logistics for sales under consideration from procuring purchase orders, collecting demand drafts , handing out C-forms, and transportation works etc.,

(58) Assailing the deafening silence of the appellants over identity and whereabouts of the brokers (Dalals), learned counsel for the respondent Assessing Authority, Mr. NK Baid said that the appellants portrayed brokers in a role taken straight as if from a fiction in it that, in respect of the aforesaid sales, no sooner had the appellants been through with oil deals than the brokers decamped for the good.

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(59) He raised query whether it was possible that the persons who on behalf of the purchasing dealers of Bihar brokered deals of the impugned Inter-State sales of mustard oil with the appellants and arranged everything in execution thereof had never divulged their personal antecedents to the appellants. All the more, intermediaries or brokers were conspicuous by absence from the scene from the day one when controversy surfaced but the appellants never entertained any anxious thoughts on their sudden disappearance.

(60) On top of it all, the appellant dealers knew nothing about the purchasing dealers of Bihar which sounded more like a fairy tale than a matter of fact statement. It spoke volumes for the collusion of the appellant dealers with the brokers and purchasers of bogus C-forms in accepting which from the brokers or purchasing dealers, the appellants had acted in a deliberate mala fide way against the just and rightful CST revenue otherwise due to the State.

(61) Advancing arguments on behalf of the respondent Revenue, Mr. N K Baid brought point home imagining a situation in which the impugned C-forms were not issued to the aforesaid purchasing dealers as per records of the competent authorities of the CTD, Bihar, but supposing that these C-forms were issued to some other dealers of Bihar, but lost or stolen at their hands or got hold of by some unscrupulous elements, even then the recipient dealers of these C-forms were per force of law bound to report the matter to their assessing authorities to save themselves from the consequences of their probable misuse by anyone and in such an eventuality even this factual information might also have ipso facto been made available to the enquiry authorities and would have made an integral part of the aforesaid enquiry report.

(62) In support of above contention, he referred to the sub rule (5) of the CST Rule 17 which stipulated that " Every registered dealer to whom any Declaration Form is issued by an assessing authority shall maintain, in a register in **Form CST 3**, a true and complete account of every such Form received from the assessing authority. If any such Form is lost, destroyed or stolen, the dealer shall report the fact to the assessing authority immediately, shall make

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appropriate entries in the remarks column of the register in Form CST 3, and take such other steps to issue public notice of the loss, destruction or theft as the assessing authority, may direct ."

(63) Learned counsel for the respondent Assessing Authority, Mr. NK Baid contended that the Assessing Authority was enjoined upon by law to check up the particulars, entries and details of the C-forms produced before him and as he was convinced of their spurious origin after due verification about the originality of the C-forms, proceeded for assessment proceedings in respect of fake statutory declaration forms confining themselves to invoking pecuniary penal provisions under the Act which in normal course the taxation authorities do. The Assessing Authority had also to keep in mind constraints of time warp, as also limitation period in deciding cases and, more often than not, unless repugnant to the very foundations of law in respect of trade and industries, the taxation authorities in fiscal cases normally did not initiate or resort to criminal proceedings against the erring dealers. In instant cases, they invoked measures which, apart from fiscal liability did not otherwise cause hardship to the appellants in orderly and smooth conduct of their business. He asserted that of the many queries his learned colleagues had raised during the course of arguments centered round vexatious question of 'to whom', 'by whom' and 'how' as regards issuance of the fake or forged C-forms could easily have been solved to their satisfaction by the appellant dealers filing FIRs for conduct of investigation into criminal act of production of fake forms, which, however, from the view point of the Revenue had been complete with finalization of the aforesaid enquiry report resulting in additional levy of tax, penalty and interest in respect of the impugned inter-State transactions.

DECISION

(64) We have heard rival contentions of the counsels for the parties to the issue on hand and now proceed to analyzing the facts and circumstances of the aforesaid cases on the point of law and facts at the backdrop of rulings of the Hon'ble High Courts and Apex Court cited (supra) .

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(65) At the outset, the appellants raised heckles over **assumption of jurisdiction** and **sections of the Act** invoked by the respondent Assessing Authority for making impugned assessments on the ground that the Assessing Authority made assessment orders under two different sections like 'u/s 24/25 of the Act', which could be passed only under one section of the Act. In some cases the assessments were made u/s 26 of the Act. Attention of the Bench was drawn to a certain notification dated August 25, 2008, which was referred to as not authorizing for the same assessment to be made afresh under section 24 of the Act if all the quarterly assessments of the period had been finalized under section 23/24 of the Act on whatever dates during the year 2007-08. It was contended that in instant cases quarterly assessments had been finalized, which were not provisional in nature but were a finally complete assessments for the purposes of the Act in view of the fact that there was no enactment in place for making provisional assessment orders under the Act. In this regard, reliance was placed on the Judgment of M/s Classic & Co. V/s D. C., reported in 124- STC- 501 (T.N.T. S T.).

(66) However, a study of the chapter of assessment in the body of the Act ranging from sections 23 to 26 therein inform us that the construct of section 23 of the Act is having bearing on the scheme of the self assessment which reads as under:

(1) every registered dealer who has filed all the returns for the year within the prescribed time shall, subject to the provisions of section 24 of the Act, be deemed to have been assessed for that year on the basis of such returns filed under section 21 of the Act.

(2) Notwithstanding anything contained in sub-section (1), a dealer may opt for quarterly assessment by informing his assessing authority or the officer authorized by the Commissioner in writing, his intention to do so, within thirty days of the commencement of the year for which such option is being exercised. The dealer who has exercised such option and filed return within the prescribed time, shall, subject to the provisions of section 24, be deemed to have been assessed on the basis of return filed under section 21 for the quarter to which it

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relates. However, for the year 2006-2007 to 2008-2009 such option can be exercised within thirty days from the date of commencement of the Rajasthan Value Added Tax (Amendment) Ordinance, 2008 (Ordinance No.6 of 2008) in the prescribed manner.

(67) In the background of the statutory position arising in the foregoing paragraphs, the contention of the appellants that the quarterly assessments in a given financial year would be treated as the final assessments lacked legal sanction in it that a perusal of the record showed that quarterly assessments in the instant cases were passed under section 17(2) of the Act which in fact was charging section for grant of early refunds and limited in scope to the extent of meeting the claim of refunds born solely out of excess input tax credit generated in the accounts of appellant dealers and had in its ambit no gathering of any other facts of sales, purchases, carried forwards, interest, fees, penalties, miscellaneous liabilities and credits etc., which are taken into account and assimilated in the yearly final assessment orders and thereby become part thereof.

(68) Moreover, such early refund assessment orders had no relation to the quarterly assessments exclusively earmarked for year 2006-07 and year 2007-08 only as envisaged under aforesaid sub section 2 of the section 23 of the Act in the manner and style of deemed assessments as mandated under section 21 of the Act on invariable condition that the dealer must have exercised option of the quarterly assessments for year 2006-07 and year 2007-08 and filed returns on due time. The quarterly assessments passed under aforesaid section 17 of the Act dealt with the turnover related to the mustard oil and the returns were analyzed with single criterion for the grant of early refunds to the appellants on this count and distinguishable from the regular assessments passed variously under different provisions of the assessments defined and prescribed in sections from 21 to 26 of the Act and were finalized in accordance with the notification no.2415, No. F12 (22) FD / Tax /2008-2009 , dated August 25, 2008, which is as follows:

(69) **" In exercise of the powers conferred by sub-section(5) of section 24 of the Rajasthan Value Added Tax Act, 2003 (Act No.4 of 2003) the state government being of the opinion that it is expedient in the public interest so**

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to do, hereby directs that the dealers, whose assessments are pending for the year 2006-07 or part thereof and 2007-08 or part thereof, shall be assessed annually for the year 2006-07 & 2007-08, under section 23 and 24 of the Act, as the case may be."

(70) It appears that the scheme of early refunds to the registered dealers has been designed to give a fillip to a hassle free tax regime for development and growth of trade and industry in the State as if a green channel under section 17 of the Act had provided a thistle free route for quick disposal of early refund claims in a given short time frame so that credits of monetary benefit were instantly deposited in their accounts, **much before the corresponding regular assessments** took place and might be hailed in the words of the learned counsel for Revenue as the most revolutionary feature of the Act because it opened sluice gates of quick flow of cash refunds in the dealers' accounts of their money otherwise held back under input tax credit in the government's chest for a lock-in assessment period of average two years until completion of a full fledged assessment.

(71) The text of sub section 2 of section 17 of the Act underlines significance of this enactment, which is as follows:

(72) **" Where the net tax payablee under sub section (1) has a negative value, the same shall be first adjusted against any tax payable or amount outstanding under the Central Sales Tax Act, 1956 or under this Act or the repealed and the balance amount if any, shall be carried forward to the next tax period or periods. In case the dealer claims refund of the balance amount, if any, at the end of year, the same shall be granted after the immediate succeeding year. However the Commissioner after recording reasons for doing so may, by a general or specific order, direct to grant such refunds even earlier."**

(73) In consonance with spirit of the section 17 of the Act as delineated above, the Commissioner, Commercial Taxes, Rajasthan issued circular dated October 27, 2007 which *inter alia* directed the assessing authorities to dispose of dealers' applications for claims of early refunds within 30 days.

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(74) And, as a natural beneficiary of the scheme of instant cash refunds, the appellant dealers submitted claims of early refunds before the Assessing Authority and on the basis of quarterly returns filed for the relevant periods were summarily assessed for the relevant quarters of year 2006-07 and year 2007-08, under section 17 (2) of Act read with section 23/ 24 of the Act which, by any stretch of imagination, could not be termed as complete assessments for the whole financial year because, only refund amount was calculated in the aforesaid orders in regard to balance proposition of input tax and output tax, and these were not full fledged assessment orders normally encompassing therein numerous details of sale and purchase, profit and loss, interest and penalty, etc., of the appellant dealers for the entire financial year.

(75) An analysis of the foregoing account makes the picture clear in the section of assessments. The appellants did not apply to the assessing authorities for exercising option of quarterly assessments for year 2006-07 and year 2007-08 so as to be assessed in accordance with provisions of the deemed assessment laid down in section 21 of the Act : a fact that had been plainly discussed in the impugned assessment orders by the Assessing Authority and so confirmed by the Appellate Authority. There was no such option letter or record placed before the Board by the appellants conveying intimation of having gone in for such an option. As the appellant dealers did not exercise such option, they could not be, subject to the provisions of section 24, deemed to have been assessed on the basis of return filed under section 21 for the quarter to which it related.

(76) The animated defence by the counsels of the appellants over non application of the exact sections in finalization of the impugned assessments was misplaced in the facts and circumstances of the cases in hand; because, taking care of such trivia, the law makers had already introduced safeguards on the statute for such mistakes, defects or omission in notices, summons and assessment orders in section 32 of the Act under caption :**Want of form not to affect proceedings ,** which read as under –

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(77) "Any notice, summons, assessment order, demand notice, order of attachment or any other order passed under this Act, which purports to be made in pursuance of any provision of this Act or the Rules, shall not be deemed to be void or voidable and shall not be quashed for want of the prescribed form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act and the Rules." (emphasis)

(78) Admitting for a moment that there was error in mentioning the correct sections of the Act in the framing of the certain impugned assessment orders, it was a stark fact that the sanctity of the impugned assessment orders in substance and effect was nowhere in doubt in the aforesaid appeals. Contextually speaking, the assessment orders in substance and effect were passed in conformity with the intent and meaning of the Act and therefore could not be termed void. The appellants' counsels had contended that the repeat of assessment orders under the same section was barred under section 80 of the Act, for it prescribed bar to proceedings except as provided in the Act. However, herein the assessments were made by the Assessing Authority and the appeal orders were passed by the Appellate Authority under the provisions of the Act and, nothing was called into question, except their being challenged at the next higher level of the appellate forums, that is, the Appellate Authority and the Board under section 82 and section 83 of the Act respectively as per provisions enshrined in the Act.

(79) A perusal of the record revealed that on the event of passing quarterly refund orders under section 17 (2) of the Act, the 'C' forms furnished to the Assessing Authority by the appellants were got verified by them from the issuing authorities of the CTD, Bihar and found in certain cases as not having been issued to the purchasing dealers by the appropriate assessing authorities in Bihar resulting in the birth of present cases of impugned C-forms, which were transferred, under legal maxim of the prosecutor could not be judge, to the various Assessing Authority who were invested with necessary jurisdiction to carry through them and in the process the aforesaid assessments were passed under section 24 or 25 of the Act in due time for the whole year making it "a first

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time and one time" happening and could not be by any method assume the shape of new, fresh assessments fashioned by reopening or reviewing the refund order assessments earlier passed under section 17 (2) read with section 24 of the Act, which were wrong projected by the appellants as an act of passing another re-assessment or review order exactly under the same section of the Act.

(80) we find substance in the plea of the counsel for Revenue that VAT form-49 of the CTD, Rajasthan was undoubtedly in possession of the Appellant-selling dealers right from the beginning, but it had legal validity only for the purpose of transporting goods out of Rajasthan in connection with inter State business operations and insofar as payment by the bank drafts was concerned, this particular banking instrument obviously did not offer substantial details save names of the firms of the appellant selling dealers, dates and amounts, and had no relevance to the altogether different matter of genuineness of C-forms under consideration.

(81) Coming to the legal matrix of cases, the cases cited by the learned counsels to buttress the point reveal the following picture:

A In case of **United Steels and Allied Industries Vs, State of Andhra Pradesh, reported in 70 STC 115,** the Hon'ble Andhra Pradesh High Court differentiated the case of purchasing dealer whose certificate of registration was cancelled from the dealer who entered into sale transactions without physically possessing the certificate of registration for it had been surrendered .The Hon'ble Court observed that the notices issued to the petitioner did not indicate that "the parties whose certificate of registration had already been **cancelled** had surrendered the certificate".

B Whereas, in case of Agfa- Gavert Vs. State of Tamil Nadu, reported in 123 STC 108, the Hon'ble Madras High Court held that "there was no material to show that a notification had been published in the gazette of Andhra Pradesh making it known to the public that the certificate of registration of the **registered dealers whose C forms had been utilized by the purchasing dealers, had been cancelled** and also that the registered dealers had surrendered unused C- forms to

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the concerned authority. There was also no material pointing out that such cancellation of registration certificates of those dealers had been duly intimated to the State Government of Tamil Nadu for due publication in the official gazette. In such state of affairs there was no possibility for the dealers to have knowledge of the cancellation of registration certificates of those dealers whose C forms have been misused by their purchasing dealers at Andhra Pradesh. Such being the case the dealer could not be deprived of the benefit of concessional rate of tax."

C The appellants also relied upon the decision in case of M/s Sastha Vs. Appellate Authority, Commissioner (CT) II, F&C, Chennai and another, (supra) , whereby the Hon'ble Madras High Court held therein that "the exemption allowed to the dealer in the original assessment order was based on the E1 form obtained from the original seller and C form obtained from the actual purchaser of the goods. Once the transaction of ***transit sales*** was over, the dealer had no control over the purchaser and he had no occasion to verify the C form produced from the side of the purchaser. The dealer had only submitted the document as given to it by the purchaser. Unless based on concrete material it was found out that the transaction was not true or the dealer was party to the act of fraud said to be committed by the purchaser, the question of disallowing the exemption already given to the dealer for the transaction actually effected between the parties, did not at all arise."

D In case of M/s Bell Ceramics Limited Vs. Deputy Commissioner of Commercial Taxes, (supra) , dealing with the validity of C forms ,the Hon'ble Karnatak High Court held that if the dealer at Tirupati had issued C forms in respect of the sales and based on that concessional rate of tax was claimed by the petitioner without knowing as to whether the dealer at Tirupati had ceased to exist from July1, 2002, then it could not be held that the C forms issued by the dealer at Tirupati was invalid. When the registered dealer, who was the purchaser, had issued C forms to the assessee it was not for the assessee to actually find out as to whether the registered dealer was in existence on the date when the sales were effected. If really the registered dealer to whom the sale had been made had

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ceased to exist from July 1, 2002 then in accordance with provisions of law, the said forms could not have been made use by the purchaser and handed over to the petitioner.

E In case of CTO Vs. Chopra Chemicals, (supra) , this Board had had to decide the fate of a garbled enquiry report concerning the validity of C-forms in a messy situation. In fact, the report **actually consisted of a photo copy of the letter** dated September 10, 1996 from Sales Tax Department, Bombay to the sales tax authorities of Rajasthan conveying certain information about C forms and registration certificates of the impugned firms as also other firms at their end. Moreover, the assessing authority claimed to have made enquiry report in the presence of the sales tax authorities of Bombay, who testified therein for having reported the same facts in their respective reports dated April 16,1992 and dated April 18,1992.The most intriguing aspect of the case was that all previous crucial reports anterior dated as aforesaid, including the enquiry report dated September 10, 1996 were not available on the record placed before the Board.

(82) The Hon'ble Board made a pertinent remark about this confusion worse confounded enquiry that the above letter dated September 10, 1996 (photo copy) of the sales tax authorities of Bombay informed that it was not possible to report the names of beneficiary firms who were issued C-forms for reason that the relevant file was not available due to reorganization of the department undertaken during year 1992-93, how then the Bombay sales tax authorities came to know that the impugned C-forms were not issued to the appellant dealer. So, there naturally arose a need for cross examination of the Bombay Officer before liability could be fastened on the dealer.

(83) Contrary to the facts in above narrative, the enquiry report taken into consideration in framing the impugned assessment cases in present cases was not composed of any garbled version of facts. At the same time, no conflicting facts comprised the report, nor did it allude to any missing letters, reports or documents, like of a messy situation prevailing in the matter of Chopra Chemicals.

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(84) Plainly speaking, it was a self contained report based on simple information gathered straight from the records of the CTD, Bihar which did not warrant any cross examination of the officials who supplied these bare factual details from the official records to the Rajasthan authorities who were conducting enquiry in the matter of controversial C-forms.

(85) As against the version of the appellants that the enquiry report was an inconclusive, cursory and superfluous report, it was a weighty argument of learned counsel of the respondent that a painstaking mammoth exercise might have been gone through by the authorities of the CTD, Bihar in rummaging out the voluminous official records of the appropriate circles to retrieve the relevant information therefrom, of the C-forms pertaining to the concerned purchasing dealers.

(86) It is not pertinent yet necessary to observe that the if size only matters, enquiry report exhausted reams of paper running into hundreds of leaves that were filled with the concise and core information on the bare fact of issuance or non issuance of the impugned C-forms by the appropriate competent authorities to the aforesaid purchasing dealers of Bihar who reportedly furnished these C-forms to the appellants.

(87) The mainstay of the report consisted of the true information in this regard when two different types of the C-forms of the same purchasing dealers in certain cases were detected : one category of the C-forms under dispute were not found issued by the competent authorities and in case of the other type, the competent authorities had indeed issued C-forms whose veracity was ipso facto confirmed. The status of the C-forms furnished by the dealers figuring in the aforesaid enquiry report depended upon the factual data of the case under verification. At the same time, it unraveled the appellants' gimmick that they had lost track of dealers and could not make enquiry, etc., since those very dealers had not been reportedly closed by the authorities of CTD, Bihar.

(88) It was brought to our notice by the learned counsel of the respondent that no other information from any extraneous source than what was already stored in the official records was provided by the authorities of the CTD, Bihar,

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and; moreover, they were not witness to any testimony either, nor any such thing was part of the report. If the appellants wanted to get to the enquiry report, they were not denied access to it, a copy of which, as the Revenue stated, had been provided to the appellants.

(89) In the light of observations made herein before, both the Appellate Authority and the Assessing Authority had rightly rejected outrageous demand made without rhyme and reason for cross examination of the assessing authorities of the CTD, Bihar and the issue is settled in favour of the respondent Assessing Authority.

(90) We have gone through the aforesaid judgments with all respect and find that facts in the instant cases are distinguishable from those deliberated upon in the cases cited hereinbefore and are contextually not identical in facts.

(91) To begin with, the Assessing Authority nowhere raised the point in the assessment orders that the dealers with cancelled registrations without surrendering the certificates had issued C-forms to the appellants as was reported in the case of **United Steels and Allied Industries Vs, State of Andhra Pradesh,(supra).** Besides, the inter-State transactions of edible oil effected between the parties to the issue in the instant cases did not involve any transit sales as was the matter in case of **M/s Sastha Vs Appellate Authority (supra).** Nor was it a case of purchasing dealers utilizing the C-forms of the dealers whose registration certificates had been cancelled as was the matter in case of **M/s Agfa- Gavert Vs. State of Tamil Nadu, (supra).** Moreover, the departmental authorities of the CTD, Bihar did not come across the purchasing dealers under consideration who were found to be non est on the dates when the impugned C-forms were made over to the appellant selling dealers as was the matter in case of **M/s Bell Ceramics Limited Vs. Deputy Commissioner of Commercial Taxes, (supra).** Here, the Assessing Authority made out a case of wrongful acceptance of C-forms by the appellants in an altogether alternative perspective of the purchasing dealers existing and doing business but tendering C-forms which were not issued to them by their assessing authorities.

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(92) Also, the Assessing Authority had not made out a case that the registration certificates of the buyers entering into inter-State transactions with the appellant dealers had ever been cancelled by the authorities of the CTD, Bihar before, on or, after, the dates on which the impugned inter-State sales had been transacted .

(93) On the other side, the Assessing Authority had justifiably made preferential judgment expressed in terms of the evaluation of alternative inasmuch as origin of the C-forms in question having not been found issued to the purchasing dealers from the relevant assessing authorities of the CTD, Bihar was considered as of fake nature.

(94) Rather it was an altogether different story de hors the rulings cited supra as the Assessing Authority herein proceeding on the alternative perspective of the appropriate assessing authorities of the CTD, Bihar having never issued C-forms in dispute to the buying dealers, had considered the same as of fake origin because otherwise by way of an alternate remedy the appellants could have persuaded Bihar based purchasers to cleanse mud off the impugned transactions branded as fake C-form borne inter-State sales by asking the authorities of CTD, Bihar to amend, rectify or update the said enquiry report with correct particulars on issuance or non issuance of the impugned C forms which would thereby render them valid and authenticated ones.

(95) It is intriguing that served with notices against offence of presenting bogus C-forms to the Assessing Authority, the appellants remained nonchalant in face of it, as if nothing serious had happened and did not feel like entering into any correspondence, persuasion, negotiations with the purchasers to settle controversy over the genuineness of the impugned C-forms.

(96) The appellants even did not go in for affidavits of denial from the purchasing dealers so as to dispel doubts about authenticity of the C-forms in question branded fake by the Assessing Authority. The appellants did not pursue matter with either the purchasing dealers or the brokers who were instrumental in creating the conflicting identity of spurious C-forms under question which led to suspicion that the appellants had mala fide presented invalid C-forms in connivance with the purchasing dealers or ghost brokers.

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(97) If the purchasing dealers of Bihar had had really any grievance against their designated assessing authorities in respect of furnishing an incorrect report on issuance of C-forms to the Rajasthan taxation authorities, they could have, if they had a true and valid case, easily got the enquiry report updated and amended with correct information which naturally would have dealt a deadly blow to controversy surrounding the C-forms in question. If truth were on their side, the appellants could have persuaded the purchasing dealers who were existing and doing business in Bihar to present the correct facts to refute the enquiry report if it at all showed unreal picture of things so as to vindicate genuineness of the C-forms called in question, otherwise inferred fake by the Assessing Authority on the strength of the aforesaid enquiry report.

(98) However, the learned counsel for the respondent failed in provoking comment from the appellants on the state of affairs with the purchasing dealers; which did not justify the pious counter poise adopted by the appellants about genuineness of the C-forms before the Assessing Authority and the Appellate Authority alike. There were other alternatives also available with the appellants to compel the purchasing dealers offset impact of additional taxation by lodging complaints on criminal charge of cheating and fraud for supply of the spurious C-forms to them and sue for grant of adequate indemnity against the fiscal liabilities they were going to be saddled with in near future if not settled properly in time.

(99) After all, it were the appellant dealers who did sell goods to Bihar dealers who were actively present on the scene and doing business as was apparent from the report that some of them were reported to have been issued certain number of impugned C-forms which were verified on scrutiny by the authorities of the CTD, Bihar and by any stretch of imagination a situation could not be envisaged in which the purchasing dealers might have either lost account of the C-forms kept in CST-3 or entries in their own books of accounts related to the aforesaid inter State turnover.

(100) However, since the appropriate circles' authorities of the CTD, Bihar had already vouchsafed for non issuance of the impugned C-forms to the purchasing dealers, they were free of any encumbrances of controversial C-forms

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and could not be compelled to part with any information over the status and genuineness of C-forms called into question before the respondent Assessing Authority for their competent authority had intimated that the impugned C-forms were not issued to them. It spoke for their smugness over a business related issue whose rigors would otherwise have hit them severely. Naturally, above postulate removes doubts as to why the purchasers who supposedly furnished impugned C-forms to the appellant sellers nowhere staged their presence in the whole controversy to shore up the appellants from the imbroglio they were in, resulting in the impugned C-forms ipso facto being classified as contrived or procured from some dubious source through questionable and devious means.

(101) No statement or argument before the bench from the side of appellants apprised us of the efforts and concern of the appellants in solving the tangle. It was short of even asking purchasing dealers to ascertain veracity of C-forms furnished by them. The law of probability threw up innumerable possibilities in such a scenario: the forms in question may have been fake, bogus, stolen, counterfeited, forged, tempered or spuriously printed.

(102) We agree with the view strongly held by learned Deputy Government Advocate for the Revenue that blame calling game was unnecessarily thrust upon the authorities of the CTD, Bihar and of Rajasthan by the appellants just for the fact that status report of the C-forms in question was not found suitable to the interests of the appellants and who, in the words of the counsel for the Revenue, painted them black as if being collaborators in a plot to harm the interests of the appellants .

(103) The motive behind the irrelevant tirade appeared to conceal tax irregularity by sidetracking the impugned issue through reverse logic in the matter that is: the appellants asked the respondent Assessing Authority to find out, in case the C-forms were not issued by the assessing authorities of the appropriate circles of Bihar, how and in what manner by whom these forms reached the purchasing dealers, and whipped up a bogey of cross examinations of Bihar officials. All this simply indicated their ploy to scuttle the controversial issue of forged nature of C-forms.

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(104) Moreover, in reference to the entire text and context of the above statutory law under section 8 of the CST Act read with rule 17 of the CST Rules what emerges is that the foregoing construction conceives an organic whole with the purchasing dealer obtaining statutory valid C-form from his assessing authority and the selling dealer correspondingly accepting the same, serving as two nodal points of it. The provision that the purchasing dealer shall under statutory obligation either directly or through any other person not transfer the same (C- form) to another purpose than in sub rule (7) of Rule 17 of the CST (Rajasthan) Rules, 1957 sets the essential condition for validity of the C-form which would be otherwise vitiated if it is found in possession of some one else.

(105) With the respondent Revenue confronting the appellants on uncomfortable question of acceptance of the C-forms considered fake, all hell broke lose and instead making efforts to solve the contentious issue, the appellants mounted campaign to put the Revenue in the dock asking crazy questions, viz: if the impugned C-forms were not issued to the purchasing dealers by the relevant circle authorities of Bihar, by whom they were issued and how the purchasers came to have had them and that the Bihar authorities who provided such an information from the record should be summoned for cross examination to answer as to what sort of proceedings they had launched against the purchasing dealers for this act.

(106) Support was drawn by the appellants from the decision of Hon'ble Rajasthan High Court, in STR no.10/1986, in case of CTO, Anti Evasion, Zone, Jaipur vs M/s Haryana Dal Mill and Anr, reported at 1991, Tax World, Page 369 ,which dealt with issue of interstate sale v sale outside the State in the background of the fact that the declarations submitted were *not found to be untrue after the enquiry*, rather *on the basis of entries in "Nood Bahi" or "Dalal" the declarations were held to be untrue*. The Hon'ble Court observed that "admittedly neither the Dalal has been examined nor the entries were proved" and held that "an opportunity should have been afforded to the assessee to discredit the entries in the "Nood Bahi" by production of "Dalal" and affording an opportunity of cross examination to the assessee.

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(107) In the present case, the facts and circumstances vis a vis those in the aforesaid case of Haryana Daal Mill (cited supra), matter was the same but only roles reversed in it that the Declarations submitted herein were *found to be untrue after enquiry had been made* and that *the "Dalals" in the changed role appeared on the scene from the side of the appellants only to be found conspicuous by absence.*

(108) On analogy of the aforesaid case, the claims of cross verification of officials of Bihar lose ground and the stand taken by the respondent sounds more rational that if in any eventuality need for the cross verification arose, it should have been made of the "Dalas" who in harmony with the appellants in instant cases conducted oil purchases and arranged logistics on behalf of the purchasing dealers inclusive of handing over C-forms to the appellants. However, in such a scenario the responsibility of ensuring presence of "Dalals" would devolve on the appellants with whom they alone transacted business admittedly. However, taking a leaf from the aforesaid judgment (supra), it would not be proper at this stage for this Division Bench to grant such indulgence to the Respondent Assessing Authority.

(109) It is difficult to comprehend why all this was relevant to the controversy raising in present cases, because even if any action was to be contemplated against the purchasing dealers on any count whatsoever, it was the concern of the VAT authorities of Bihar. As for the Assessing Authority, once the Bihar's assessing authorities had provided relevant information to it that they had not issued the C-forms to the purchasing dealers, the chapter on the issue was closed from their side which could have been reopened only if the appellants challenged it with rebuttal backed up by incriminating facts, or some substantial information or any other evidence contradicting the finding of non issuance of C-forms, which would have turned tables to their side and could be of use in forwarding the matter to Bihar VAT authorities for confirmation and further necessary action. But, everything was quiet on the appellants' front. And, no denial substantiated with any tangible proof expected of the appellants ever saw light of the day.

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(110) On the other side of the spectrum, the appellants rather had an innocuous answer that they effected inter-State sales with dealers of Bihar through brokers/intermediaries, called 'Dalals' in common parlance, who saw entire logistics: procured orders, collected bank drafts and C-forms in respect of the impugned inter-State sales, They made over the C-forms to the appellants who accepted them but pleaded ignorance of the identity and whereabouts of the aforesaid illusive brokers who since disappeared.

(111) They orchestrated the theme, to quote it from the appellant's written draft, that, *"the inter-State sales were effected through oil ' Dalals' who used to procure purchase order from the outside State purchasers and after collecting declarations 'C' and demand drafts from such purchasers passed on these to the sellers from Rajasthan (Appellant) and as such we sellers had no control or any opportunity of any enquiry, etc.,"* and that they *"only have to rely upon the information and representations made in the 'C' forms received and it is not the case of the department that purchasers of Bihar were not registered dealers or not dealers in oil trade."*

(112) Learned counsel for the respondent Revenue said that the appellants were non committal on divulging the personal identities like names, addresses, and whereabouts of the clandestine unknown brokers (Dalals) who though projected as having personally attended to the nuanced sales under consideration and " ***were relied upon"*** by the appellants as per their version of the things, yet never took trouble to have any personal knowledge of these anonymous players called " Dalals".

(113) However, the moment C-forms in question were suspected of dubious origin and declared fake by the respondent Revenue, the so called brokers left the scene and were conspicuous by absence. The stage managers of fake C-form drama had flown by the wall in the thick of the controversy, and the appellants carefully avoided even any casual reference to these fly by night operators and played just a faux naïf with regard to their whereabouts. Who were these nameless, wheelers dealers, nobody knew, at least not the respondents.

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(114) Moreover, ample opportunity was given to the appellants to prove that the 'C-forms found to be not issued' were in reality were genuine C-forms and to this effect they were given due notices, supplied copies of relevant information from the Bihar authorities and orders were then accordingly passed. At the first and even at the present Appellate level, they had ample opportunity to make rebuttal of the charge with facts of evidentiary value which never came up for consideration before us.

(115) In the considered opinion of the bench, the enquiry report was a legally worded, precise report from the Bihar CTD in which the identity of C-forms was expressed in terms of whether they were issued by the appropriate circle authorities or not. When analyzed in context of the relevant sub rule (1) of Rule 17 of the CST (Rajasthan) Rules, 1957, and sub rule (1) of Rule 9 of the CST (Bihar) Rules, 1957 the picture emerging dispelled clouds of uncertainty over the controversy in issue and one would be all appreciation for the right direction of the enquiry in the aforesaid report:

Sub rule (1) of Rule 9 of the CST (Bihar) Rules, 1957 says:

(116) **A registered dealer, who wishes to purchase goods from another such dealer on payment of tax applicable under the Act to sale of goods by one registered dealer to another, for the purposes specified in purchasing dealer's certificate of registration shall obtain from the Assistant Commissioner the Form of Declaration prescribed under sub section (4) of section 8 of the central sales tax act, 1956, and furnish it to the selling dealer.**

(117) The statutory provision herein above terminates the scope of a genuine C-form being issued to anyone else than the purchasing dealer by the assessing authority of the appropriate circle. Once the issuing authority says that such and such C-forms have not been issued to the purchasing dealer(s), the respondent has discharged *simper necessitas probandi incumbit ei qui agit,* the nearest translation of this Latin maxim would be: " the necessity of proof always lies with the person who lays charge."

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(118) Therefore, initial onus of proof that the C-forms called into question were not genuine C-forms was corroborated by the respondent Revenue's finding based on enquiry report that the impugned C-forms furnished to the Assessing Authority obtained by whomsoever were in manner that was in complete violation of the mandatory requirement of law as per sub rule (1) of Rule 17 of the CST (registration and turnover) Rules, 1956 meaning thereby that they were at least not obtained by the purchasing dealer from his assessing authority as the aforesaid law mandated : " *he shall obtain Declaration form C from his assessing authority*", which when construed conveyed the effect of the impugned C-forms being interstate transactions without C-forms.

(119) In the aforesaid cases under appeal, the appellants furnished the proof of concessional rate of tax on the inter-State sales by tendering before the Assessing Authority the C-forms furnished by the purchasing dealers in Bihar. However, after an enquiry had been conducted into the genuineness of the aforesaid C-forms in question it was disproved on account of their having never been issued to the purchasing dealers by the concerned assessing authorities of Bihar. It caused onus to shift to the appellants for rebuttal of the charge of furnishing bogus and fake C-Forms laid at their door.

(120) The onus of proof is not a stationary paradigm and may shift as the arguments advance and the case takes turns during the course of proceedings. In present cases, after shifting of the onus of proving genuineness of the C-forms in question lay squarely on the shoulders of the appellant selling dealers for the Revenue had discharged it with presentation of the aforesaid enquiry details in respect of the C-forms. They ought to have proved the real worth of the C-forms inasmuch as validity of their origin was concerned because with the progress of arguments in the cases on hand, the responsibility to prove their veracity was now shifted from the Revenue to the appellants.

(121) With the shifting of onus, it was now invariably necessitated of the appellants to refute the charge of invalid C-forms with rebutting evidence in contradiction to the high position held by the respondent Assessing Authority. However, the rebuttal with supporting evidence from the side of appellant selling

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dealers never materialized before us. As a natural corollary to it, the charge of fake and bogus C-forms leveled by the respondent Assessing Authority was stuck with the appellant selling dealers until the end and could not be demolished by the appellants.

(122) On both the counts, the appellants failed to convince the respondent-Revenue how their strange trade practices ensured that the C-forms in question they had from whatever source and furnished to the Assessing Authorities were genuine. It was not a case to determine genuineness of the Bihar dealers purchasing oil from dealers of Rajasthan but of the veracity of C-forms furnished by the appellant sellers supposedly made over to them by the purchasing dealers for availing concessional rate of tax against the impugned inter-State transactions.

(123) All these compulsions of the business processes, however, could not produce a waiver of the statutory liability of furnishing appropriate, valid and authenticated C-forms to get benefit of concessional rate of central sales tax by the appellants. The mandatory directive of law to the appellant selling dealers for abiding with the statutory requirement of furnishing valid C-forms in terms of sub section (1) & sub section (4) of section 8 of the CST Act, 1956 read with sub rule (1) and sub rule (3) of Rule 17 of the CST (Rajasthan) Rules, 1957 and, in respect of sub rule (1) and sub rule (3) of Rule 9 of the CST (Bihar), for availing benefit of concessional rate of tax against their inter-State transactions, was not fulfilled and could not in any case have been dispensed with, either.

(124) it is imperative to go through relevant legal provisions laid down under sub rule (1) and sub rule (3) of Rule 17 of Central Sales Tax (Rajasthan) Rules, 1957,(for short, " the CST (Rajasthan) Rules, 1957") read with sub section (1) and sub section (4) of the Section 8 of the CST Act ,1956 on the matter, which are reproduced as follows:

(125) **The rates of tax on sales in the course of inter-State trade or commerce are determined as set forth under sub section (1), sub section (2) & sub section (4) of section 8 of the CST Act which being charging section in this regard is given herein below:**

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(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover insofar as the turnover or any part thereof relates to the sale of goods in the course of inter State trade and commerce not falling within sub section (1) shall be at the rate applicable to the sale and purchase of such goods inside the appropriate State under the sales tax law of that State.

(3) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless **the dealer selling the goods furnishes** to the prescribed authority in the prescribed manner **a declaration** duly filled and signed **by the registered dealer to whom the goods are sold** containing the prescribed particulars ***in a prescribed form obtained from the prescribed authority.*** (italics our's)

(126) It may be pointed out that the above statutory provisions were brought into force by Taxation Laws (Amendment) Act, 2007, with effect from April 1 ,2007, and by virtue of applicability are relevant to the aforesaid cases pertaining to assessment period of year 2007-08 and the years thereafter.

(127) However, in case of the aforesaid appeals pertaining to assessment period fiscal 2006-07, the provisions of the then existing law stipulated liability to tax in respect of interstate sales to be calculated @ two percent but was restricted by an adjunct modifying the then clause (b) of sub-section (1) of section 8 in force: "provided that the rate of tax payable under this sub-section by a dealer shall continue to be four per cent of his turnover, until the rate of two percent takes effect under this sub section."

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(128) **However,** in the period prior to the Taxation Laws (Amendment) Act, 2007, the provision relevant for the purposes herein in respect of the impugned appeals for fiscal 2006-07 was governed by *the then existing clause (b) of aforesaid sub-section (2) of section 8 of the CST Act which said that tax payable by a dealer on his inter-State turnover not falling within sub-section (1)-*"**in the case of goods other than declared goods shall be calculated at the rate of ten percent or at the rate applicable to sale or purchase of such goods inside the appropriate State whichever is higher."**

(129) It would not be out of place to quote an excerpt from the judgment of the Hon'ble Rajasthan High Court in the case of M/s Modi Steel Furniture Vs CTO, Anti Evasion, Sri Ganganagar, SB VAT Revision Petition no. 57/2012, dated May 3, 2012 wherein Hon'ble Rajasthan High Court, *inter alia,* held that " ***as far as powers of Tax Board are concerned, as discussed herein above, they are vast, co-extensive, with that of the Assessing Authority and thus being final fact finding body or authority created under the Act, has ample powers to pass such best judgment quantifying the unaccounted sales and purchases"*** (emphasis)

(130) At the backdrop of above, the mustard oil was taxable @ 4 % in the State of Rajasthan for fiscal 2006-07 and the CST payable on its sale to the registered dealers of other States in the course of inter-Sate trade and commerce from Rajasthan was @ 2 % on condition of furnishing C forms on strength of Notification no. F 12 (63) FD / Tax/ 2005-101, dated: October 18, 2006 issued under sub-section (5) of section 8 of the CST Act ,1956 in supersession of earlier notification No.F 12 (14) FD/ Tax/ 2006-134, dated: March 03. 2006 whereby rate of the CST payable on the inter-State transactions of mustard oil was stipulated @ 1 per cent which continued until October 17, 2006; but, in case such sales were not carried through by virtue of being fortified with C-forms, they were exigible to tax @ 10 per cent, as was the case in the aforesaid impugned appeals for the year 2006-07 for want of valid C-Forms.

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(131) The Assessing Authority should have levied CST for year 2006-07 in respect of the impugned evaded inter-State turnover in terms of clause (b) of sub section (2) of section 8 of the CST Act, 1956 existing as on March 31, 2007 at that stage. Herein, the impugned C-forms were found to have not been *issued* by the competent authority of the relevant circles in consonance with sub- section (4) of section 8 of the CST Act, 1956 read with sub-rule (1) of rule 9 of the CST (Bihar) Rules,1957,nor were they *furnished* in accordance with sub-rule (3) of rule 17 of the CST (Rajasthan) Rules,1957 and/or sub-rule (3) of rule 9 of the CST (Bihar) Rules,1957, which caused the respondent Assessing Authority declare them fake considering them as of invalid origin; and, therefore, the aforesaid inter-State sales being divested of *genuine C- forms* (emphasis) would be subject to tax in accordance with the scheme of tax as laid down in the sub section (2) of the section 8 of the CST Act, 1953 which addressed to the sales without C-forms meaning that:

(A) Therefore, in the aforesaid cases pertaining to year 2006-07 the rate of tax to be levied on the impugned turnover of mustard oil would be @ 10 per cent for want of valid C-forms in present cases, instead of levy of tax @ 4 per cent on the impugned sale of mustard oil as per schedule I V to the Act in the relevant year 2006-07, but in the cases where units of the appellants were availing benefits of exemptions from tax under the Rajasthan Sales Tax (VAT) Incentive Schemes, necessary deductions in the tax rate by way of exemption from tax to the extent validly allowable under the Scheme for the relevant period would be subtracted proportionately from the aforesaid proposed imposition of tax @ 10 percent for year 2006-07.

As the rate of tax with respect to sale of mustard oil in the State of Rajasthan for year 2007-08 was kept at four per cent which by itself turned into as rate of the CST on the inter-state turnover of the mustard oil without C-forms for year 2007-08, which also equally applied to the impugned inter-State turnover effected on the strength of invalid C-forms in case of the aforesaid appeals for year 2007-08; since the scenario was changed with coming in force the amendment notification in regard to the aforesaid section 8 of the CST Act on April 1, 2007.

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(B) Naturally, to all intents and purposes, the rate of CST on the impugned turnover of the mustard oil in the assessment orders for year 2007-08 would be @ 4%. However, in cases exclusively for units of the some appellants which were availing tax exemptions from tax under the Rajasthan Tax Incentive Schemes, it (the rate of 4 percent) would be subject to subtraction of tax rate to the extent of benefit of exemption from tax proportionately allowable by law and available in the relevant period.

(132) In this connection, the amended sub section (2) of section 8 of the CST Act, 1956 Act read with sub section (4) of section 8 of thereof with effect from April 1, 2007 is reproduced herein below:

(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be three percent, of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover insofar as the turnover or any part thereof relates to the sale of goods ***in the course of inter State trade and commerce not falling within sub section (1) shall be at the rate applicable to the sale and purchase of such goods inside the appropriate State under the sales tax law of that State.*** (emphasis)

(3) The provisions of sub-section **(1)** shall not apply to any sale in the course of inter-State trade or commerce unless **the dealer selling the goods furnishes** to the prescribed authority in the prescribed manner **a declaration** duly filled and signed **by the registered dealer to whom the goods are sold** containing the prescribed particulars ***in a prescribed form obtained from the prescribed authority.*** (emphasis).

(133) To elaborate the issue thread bare, the harmonious reading of the **Rule 17 of CST (Rajasthan) Rules** with corresponding **Rule 9 of the CST (Bihar) Rules, 1957** is necessary inasmuch as the mechanism of C-form borne sales has got a pivotal role to play in the whole gamut of the aforesaid transactions:

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Sub Rule (1) of Rule 17 of the CST (Rajasthan) Rules,1957 :

(134) "A registered dealer, **who wishes to purchase goods from another such dealer** on payment of tax at the rate applicable under the Central Act **to sales of goods** by one registered dealer to another, **shall obtain from the assessing authority a blank Declaration Form** prescribed under rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 **for furnishing it to the selling dealer.**

Sub Rule (2) of Rule 17 of the CST (Rajasthan) Rules,1957:

(135) **"A registered dealer who** claims to have **made a sale to another registered dealer shall,** in respect of such claim, **furnish to his assessing authority** the portion marked "Original" of **the Declaration received by him"**

Sub Rule (3) of Rule 17 of the CST (Rajasthan) Rules,1957:

Sub Rule (7) of Rule 17 of the CST (Rajasthan) Rules,1957:

(136) " **No registered dealer** to whom **a Declaration Form is issued by the assessing authority shall,** either directly or through any other person, **transfer the same to another person** except for the lawful purpose of sub-rule (1).

(137) **Sub rule (1) and sub rule (3) of Rule 9 of the CST (Bihar) Rules, 1957** also have an apposite description in their respective statute for the relevant periods:

Rule 9 (1) of the CST (Bihar) Rules, 1957: A registered dealer, who wishes to **purchase goods from another such dealer on payment of tax** applicable under the Act to sale of goods **by one registered dealer to another**, for the purposes specified in purchasing dealer's certificate of registration **shall obtain from the Assistant Commissioner** the **Form of Declaration** prescribed under sub section (4) of section 8 of the central sales tax act, 1956, **and furnish it to the selling dealer.**

Rule 9 (3) of the CST (Bihar) Rules, 1957: " No purchasing dealer **shall give**, nor **shall a selling dealer accept** , any **Declaration** except in a Form obtained **by the purchasing dealer,** on application, from (**from the Assistant Commissioner, the Superintendent or the Assistant Superintendent**) and not declared obsolete and invalid by the Commissioner under sub rule (10)."

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(138) A conjoint reading of sub section (1) and sub section (4) of the section 8 of the CST Act, 1956 with sub Rule (1) and sub Rule (3) of the Rule 17 of the CST (Rajasthan) Rules, 1957 and/or sub Rule (1) and sub Rule (3) of the Rule 9 of the CST (Bihar) Rules, 1957 delineates the underlying principle of the interstate sales at concessional rate of tax under aegis of C-forms and highlights the full proof inter locking mechanism in the aforesaid rules in place for preventing misuse of C-forms inasmuch as their being "**given**" and "**accepted**" by the purchasing dealer and the selling dealer respectively are concerned.

(139) It is necessary to appreciate the construct of the aforesaid sub section (4) of section 8 of the CST Act, 1956 which unequivocally lays down that the provisions of sub-section (1) relating to specific rates of tax *shall not apply* to any CST sales unless the dealer selling the goods furnishes to the prescribed authority (Assessing Authority) in the prescribed manner a declaration (C-form) duly filled and signed by the registered dealer (purchasing dealer) to whom the goods are sold containing the prescribed particulars in a prescribed form (C-form) obtained from the prescribed authority (his assessing Authority).

(140) In compliance of the above law and application thereof, sub rule (1) of Rule 17 of the CST Rules seeks to achieve that "a registered dealer, who wishes to purchase goods from another such dealer on payment of tax at the rate applicable under the Central Act to sales of goods by *one registered dealer to another*, shall obtain from the assessing authority a blank Declaration Form C for furnishing it to the selling dealer."

(141) There is no obstacle until this point if the goods have been purchased from a registered dealer who being eligible shall obtain from his assessing authority C-forms for furnishing those to the selling dealer, but to ensure fair play in the task of giving and accepting the Declaration Form- C, it has also been enjoined, in the relevant aforesaid **Rule 17 (3) of the CST (Rajasthan) Rules** and corresponding aforesaid **Rule 9 (3) of the CST (Bihar) Rules** binding both **registered selling dealer and registered purchasing dealer,** to ensure that in **giving** and **accepting the statutory form-C** the statutory provision of obtaining

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in a **'prescribed manner'** from **'prescribed authority'** under the aforesaid **sub section (4) of section 8 of the** CST Act, 1956 would be a sina qua non for such inter State transactions.

(142) It clearly sets out parameters of a C-form based inter-State sale and purchase at concessional rate of central sales tax in an inalienable position where both the parties to it are legally bound to go by the inexorably entwined inherent twin-condition clause in the aforesaid rule 9 (3) of the CST (Bihar) Rules as well as in the rule 17(3) of the CST (Rajasthan) Rules, 1957 that "no purchasing dealer **shall give**, nor **shall a selling dealer** accept declaration except in a Form obtained by the purchasing dealer, on application, from the assessing authority", failing which the aforesaid sales effected under sub-section 1 of section 8 of the Act would be relegated to the position of C-form less inter-State sale falling under sub section 2 of section 8 of the Act.

(143) The aforesaid provision of giving and accepting C- forms has been made mandatory for both the parties. If it was a necessary pre requisite for the purchasing dealer to obtain C-form from his assessing authority, it had been equally mandated for the selling dealer to accept only that C-form which was obtained by the purchasing dealer from his assessing authority. The above construct ensures that an overriding responsibility awaits the seller under Rule 17 (3) of the CST Rules, 1957 who to all intents and purposes is bound by the aforesaid statutory enactment that he shall only accept the declaration form in above manner.

(144) Drawing sustenance from the landmark decision of the Hon'ble Apex Court in case of S Gopal Reddy V. State of A.P. [1996] 4 SCC 596, para 20, this bench considers that in terms of the Rule 17 the duty devolved on the selling dealer to ensure that the C-forms he was going to "accept" had been "obtained by the purchasing dealer from the (his) assessing authority". Further, the import of the statutory enactment that **no purchasing dealer** shall give, nor shall **a selling dealer** accept **declaration** except in a **Form obtained by the purchasing dealer,** on application**, from the assessing authority** unequivocally conveyed explicitly a binding legal obligation for both the parties: purchaser and seller, which at the risk of repetition are reproduced as follows:

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Rule 9 (3) of the CST (Bihar) Rules, 1957: " *No purchasing dealer shall give, nor shall a selling dealer accept* , any Declaration except in a Form obtained by the purchasing dealer, on application, from (from the Assistant Commissioner, the Superintendent or the Assistant Superintendent) and not declared obsolete and invalid by the Commissioner under sub rule (10)." (emphasis)

Rule 17 (3) of the CST (Rajasthan) Rules: " *No purchasing dealer shall give, nor shall a selling dealer accept* , any Declaration except in a Form obtained by the purchasing dealer, on application, from the Assessing Authority and not declared obsolete and invalid by the Commissioner, Commercial Taxes under the provisions of sub rule (10)." (emphasis)

(145) As a natural corollary to that, it is the selling dealer who was giving credit of lower tax rate to the purchasing dealer on a government instrument called C-form which was to be given by the purchaser and accepted by the seller. The seller cannot shirk off his responsibility to enquire of the fact the forms he received were obtained by the purchasing dealer from his assessing authority. To say it in other words, the seller cannot eat the cake and have it also. ~~At the risk of repetition, the~~

(146) The two-word expressions "shall give" and "shall accept" in context of the inter State purchase and sale under sub Rule (3) of Rule 9 of the CST (Bihar) Rules, 1957 and sub Rule (3) of Rule 17 of the CST (Rajasthan) Rules, 1957, in our opinion , binds both the purchaser and the seller in a sort of cross default provision for fulfillment of mutually inalienable mandatory requirement for such sales failing which either party loses claim of C-form supported inter-State sale which would naturally relegate them to domain of the C-form less inter-State sales under sub section (2) of section 8 of the CST Act,1956.

(147) Coming to penalty levied under section 61 of the Act in the aforesaid cases by the Assessing Authorities and the Appellate Authority, it would have to be analysed whether the C forms under dispute were furnished by the selling dealers in cahoots with some sources or that these spurious Declaration forms were simply accepted by them in a routine manner.

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(148) However, the Respondents could not elaborate upon any willful intent of the appellants in defrauding the State of her rightful tax revenue by the appellants other than carping on the theory that the appellants had donned the mask of feigned ignorance about the whereabouts and identity of both the purchasing dealers and the brokers and similarly of spurious nature of the impugned C-forms, in spite of selling huge quantities of oil to the purchasing dealers over a long period of a couple of years.

(149) Though it goes against the norms of business ethics that the inter-State sales with Bihar dealers of the volumes as discussed above involving sale proceeds of huge amounts of money were brought about through brokers of unknown identity whose addresses and whereabouts the appellant dealers could not cite before the authorities and also it is against normal behavior that they even did not have a formal relationship with brokers and purchasing dealers of the level of bare acquaintance, either.

(150) However, it also raises doubts as to why the appellants after scandal of the C-forms had blown out did not approach the purchasers despite that the latter were presently existing registered dealers and working in Bihar. The appellants took the plea that the only bridge or link that they had had with the purchasing dealers were "dalals" (brokers), which snapped with their disappearance. They expressed helplessness that they had lost control of them, after the transactions were through.

(151) Moreover, in reference to the entire text and context of the above statutory law under section 8 of the CST Act read with rule 17 and rule 9 of the CST Rules of Rajasthan and Bihar respectively what emerges finally is that the foregoing construction conceives an organic whole with the purchasing dealer obtaining statutory valid C-form from his assessing authority and the selling dealer correspondingly accepting the same from him , both serving as two nodal points of the statute. The provision that the purchasing dealer shall under statutory obligation either directly or through any other person not transfer the same (C-form) to another purpose than in sub rule (7) of Rule 17 of the CST (Registration and Turnover) Rules, 1956 sets the essential condition for validity of the C-form which would be otherwise vitiated if it is found in possession of some one else.

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(152) In the facts and circumstances of the aforesaid cases the C-forms called in question were never issued to the purchasing dealers by their competent authorities under aforesaid sub Rule (1) of Rule 17 of the CST (Bihar) Rules as is evident from the enquiry report prepared with information obtained from the CTD, Bihar's relevant records given to the enquiry authority and in such circumstances, the purchasing dealers had no raison detre to "give" any such C-forms that were not valid by reason of having never been issued to them, nor the appellant dealers were mandated to "accept" such invalid C-forms under sub rule (3) of rule 17 of the CST (Rajasthan) Rules, 1957 .

(153) The appellants cited the following judgments of the Hon'ble Courts to prove the point that no penalty was leviable in the aforesaid cases under section 61 of the Act:

1. CTO v. Birdhi Chand Manchidhar
2. M/s SHRI Krishna Electricals v. State of Tamil Nadu and Anor
3. ACTO, Ward Ist, Rajsamand v. White Marble House
4. CTO, Jodhpur v. Kohinoor Industries, Jodhpur
5. ACTO Ward-I Rajasmand V/s M/s White Marbles(2006) 148 STC14(Raj)
6. M/s Lord Venkateshwara Caterers Vs. CTO Anti Evasion, (supra)

(154) Relying on case of M/s Shri Krishna Electricals v. State of Tamil Nadu and Another (supra), the appellants vociferously raised the point that every transaction in the present cases was duly recorded in a/c books as was the factual scenario in the aforesaid case of M/s Shri Krishna Electricals, wherein the Hon'ble Apex Court held that "so far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's books of accounts. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealers' turn over disallowing the exemption penalty cannot be imposed. Penalty levied stands set aside".

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(155) Much emphasis was laid on the case of Commissioner of Income-tax Vs. M/s Reliance Petro Products Private Limited, reported supra, wherein the Hon'ble Apes Court held that "the situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its return" and dismissed the appeal filed by the Revenue on the ground of having no merit.

(156) It was also brought to the notice that the Hon'ble Rajasthan High Court in several cases and the Hon'ble Patna High Court in the case of Reckitt Benckiser (India) Limited Vs. State of Bihar, reported in 137 STC 537, held that provisions for levy of penalty are applicable where escaped turnover was discovered before assessment and it applied only to cases where the dealer concealed sales or purchases or particulars thereof with a view to reducing his liability. The counsels of appellants brought point home that no such situation existed in case of instant appeals and therefore penalty levied by the Assessing Authority and upheld by the Appellate Authority should be set aside.

(157) It was contended that the Hon'ble Rajasthan High Court in case of Lord Venkateshwara Caterers Vs. CTO Anti Evasion, (supra), had opined that if there is a conduct contumacious or guilty intention on the part of the subjector assessee in not paying the tax, the reasonable conclusion can be arrived at only after complying with the principle or natural justice and therefore, considering the facts and circumstances of the case set aside the penalty which was so imposed by the assessing authority under section 65 of the RST ACT, 1994", which, as Mr. Sharma, learned counsel of the appellants had pointed out in the course of arguments, was para material to the section 61 of the Act and therefore applicable in present cases.

(158) The learned counsels relied on the case of CTO Vs. M/s Sojatline Company ,(supra), wherein relying on the judgment of the Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. Anwar Ali, reported supra, the Hon'ble Rajasthan High Court set out that "mere rejection of the explanation of the assessee as false does not automatically attract penalty in such a situation and before the penalty can be imposed it must be held that the assessee had consciously concealed the particulars or had deliberately furnished inaccurate

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particulars". They had argued that their dealers had not concealed any particulars from the authorities or in their books of accounts. Hence, they did not deserve any penalty.

(159) In order to reach any conclusion on the matter of penalty, we ought to have a look at the provisions of the section 61 of the Act, which is reproduced as under:

61. Penalty for avoidance or evasion of tax. –

(1) Where any dealer has concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein or has concealed any transactions of sale or purchase from his accounts, registers or documents required to be maintained by him under this Act or has avoided or evaded tax in any other manner, the assessing authority may direct that such dealer shall pay by way of penalty, in addition to the tax payable by him under this Act, a sum equal to two times of the amount of tax avoided or evaded.

(2) Notwithstanding anything contained in sub–section (1), where any dealer has availed input tax credit wrongly, the assessing authority shall reverse such credit of input tax and shall impose on such dealer–

(a) in case such credit is availed on the basis of false or forged VAT invoices, a penalty equal to four times of the amount of such wrong credit; and

(b) in other cases, a penalty equal to double the amount of such wrong credit.36

(160) The learned counsel for the the Assessing Authority had relied upon the judgment of the Hon'ble Supreme Court in case of M/s India Agencies Banglore Vs Additional Commissioner, which was also quoted by the Appellate Authority in the aforesaid appeal orders wherein issue of submission of photocopy of the C-form in place of the original or duplicate copy of the C-form was involved. In view of the decision of this Court in the case of Kedarnath Jute Manufacturing Co. (supra) and of the decision in Delhi Automobiles (P) Ltd. (supra), it is clear that these provisions have to be strictly construed and that unless there is strict compliance with the provisions of the statute, the assessee was not entitled to the concessional rate of tax. We are of the opinion that a liberal construction was not justified having regard to the scheme of the Act and the

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Rules in this regard and if there was any hardship, it was for the legislature to take appropriate action to make suitable provisions in that regard. It is also settled rule of interpretation that where the statute is penal in character, it must be strictly construed and followed.

(161) However, in the present appeals, the decision of the Hon'ble Rajasthan High Court in case of ACTO, Ward I , Rajsamand Vs Ms. White Marble House , reported in (2006) 148 STC 14, on the isuee of non applicability of levying penalty is germane to the facts and circumstances of the cases in hand. Another judgment of the Hon'ble Rajasthan High Court in case of the C T O, Jodhpur Vs. M/s Kohinoor Industries, Jodhpur (2007) 18 TUD 139 aptly fits in the facts and circumstances of the cases in hand; an excerpt of the above judgment squarely addresses the controversial issue of penalty in such cases:

"Substantially the facts are not in dispute and now it cannot be disputed that the C-form which were not genuine C-form. There is substance in the contention of the learned counsel for the non-petitioner that he bonafidely believed that the C-From were genuine and, therefore, the penalty cannot be imposed without further proof of deliberate act of the assessee to show that he obtained and used these forged C-Form knowing them to be forged one. Therefore, so far as the amount of penalty is concemed, there is justification for not imposing the penalty over the tax amount but so far as interest is concerned it is admitted case that the tax was not paid in time and, therefore, the assessee-petitoner is liable to pay interest."

(162) At the backdrop of the analysis of the facts and law in the foregoing paragraphs, the Bench holds the view that since the main issue in the cases on hand was related to the genuineness of the C-forms in question furnished by the appellants before the Assessing Authority, the version of the appellants of being handed out C-forms called in question by the brokers on behalf of the purchasing dealers coupled with the assertion that the appellants unsuspectingly accepted the impugned invalid C-forms as genuine ones could not be countered by the respondents as an act of tendering invalid C-forms maliciously before the Assessing Authority or that it was done with an ulterior motive of suppressing tax mala fide.

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(163) In view of the above analysis, it is held that the penalty imposed in the present cases over the tax amount is not justifiable but so far as interest is concerned it is admitted case that the due tax was not paid in time and, remained to be paid therefore, the appellants are liable to pay interest in accordance with scheme of section 55 of the Act.

(164) However, the Assessing Authority would modify the impugned assessment orders for year 2006-07 and year 2007-08 in accordance with the principle enumerated and directive given in the foregoing Para 131 **(A)** and Para 132 **(B)** for determining due rate of tax on the impugned turnover of mustard oil @ 10 percent for year 2006-07 and @ 4 percent for year 2007-08 for want of valid C-forms , and pass fresh orders accordingly within a period of four months from the date of receipt of this order. In so far as the imposition of interest is concerned, it would be payable on tax leviable; and, therefore, it would be imposed under section 55 of the Act accordingly, when fresh assessment orders are passed by the Assessing Authority.

(165) Summing up, the aforesaid appeals are partly accepted on the issue of non-applicability of penalty and its levy in the aforesaid assessment orders under section 61 of the Act is set aside. On the impugned issue of tax and interest, the assessment orders would be modified and remanded to the Assessing Authority for this purpose towards the extent as described in the Para 131 **(A)** and Para 132 (B) of the order, and the appeal orders are quashed to the extent as enumerated above.

The orders are pronounced.

25.6.2015

(MADAN LAL)
MEMBER

(SUNIL SHARMA)
MEMBER