

(2016) 07 AHC CK 0084

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 119, 120, 121, 122, 123, 125, 126, 127, 128, 131, 124 and 129 of 2016

M/S Hindustan Coca Cola Beverage Pvt. Ltd.

APPELLANT

Vs

Commissioner, Commercial Taxes

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 48(5)

Citation : (2016) 8 ADJ 180 : (2016) 93 UPTC 409

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

Advocate : Rahul Agarwal, Advocate, for the Appellant; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Yashwant Varma, J.—;This batch of commercial tax revisions lays challenge to the order of the Tribunal dated 15 January 2016 upholding the imposition of penalty upon the revisionist-assessee. The proceedings themselves pertain to Assessment Year 2009-10 and relate to a seizure of goods being dispatched by the revisionist and a consequential levy of penalty under Section 48(5) of the U.P. VAT Act, 2008 (VAT Act). Since common questions of law arose from these revisions, they with the consent of parties were heard together and are being disposed of by this judgment.

2. The facts leading upto the passing of the impugned order fall within a narrow compass. The revisionist is engaged in the manufacture of soft drinks, fruit juices and other aerated beverages. It is registered both under the VAT Act as well as the Central Sales Tax Act, 1956. It was its case that during the peak summer months there is a heightened demand for soft drinks as a result of which the revisionist is compelled to engage additional contract labour on a temporary basis at its factory at Dasna, District Ghaziabad. This labour, the revisionist submits, is engaged for loading and dispatching of consignments to its various

stockists and distributors situate across the States of U.P. and Uttarakhand. It was the case of the revisionist that the dispatches of soft drinks were duly accounted for in the Books of Account and that all transactions stood duly reflected in the records maintained by it. During the course of oral submission, learned counsel for the revisionist pointed out that following international practices the tax invoices accompanying each consignment also carried the "date of manufacture" as well as the "batch number" of the soft drinks and beverages. As was contended before the authorities below and a submission which was reiterated before this Court, learned counsel for the revisionist pointed out that during the course of loading and dispatching of consignments, the additional labour inadvertently placed certain consignments and packages meant for a particular truck onto other trucks which upon seizure led to the Department claiming that there was a discrepancy in the "date of manufacture"/"batch number" details mentioned in the tax invoices when compared with the actual consignments loaded on the truck. It was these discrepancies which primarily led to the seizure of consignments and ultimately culminated in orders imposing penalty. The assessing authority not accepting the explanation furnished by the revisionist proceeded to levy penalty on the errant consignments constraining the revisionist to prefer appeals which came to be dismissed by the first appellate authority. Aggrieved by the decision of the first appellate authority the revisionist preferred Second Appeals before the Tribunal which dismissed as many as six appeals by a common judgment and order dated 15 January 2016.

3. To view the facts in a clearer perspective, the details of the revisions, details of the second appeals, the value of consignments, the amount of penalty imposed and moneys deposited, may be viewed from the following chart:

S.No.

CTR No.

Second Appeal No.

Order of the Tribunal

A.Y.

Consig. Amount

Penalty Amount

Amount Deposited

Amount Stayed

Remarks

1.

119/2016

438/2013

15/01/16

2009-10

2,39,113/-

42,810/-

42810/-

Penalty @ 25% on 1,39,283/& @ 8% on 99,830/-

2.

120/2016

437/2013

15/01/16

2009-10

1,08,486/-

27,122/-

27,122/-

Penalty @ 25% on 1,08,486/-

3.

121/2016

448/2013

15/01/16

2010-11

1,75,000/-

70,000/-

70,000/-

Penalty @ 40% on 1,75,000/-

4.

122/2016

446/2013

15/01/16

2010-11

93,000/-

37,200/-

37,200/-

Penalty @ 40% on 93,000/-

5.

123/2016

440/2013

15/01/16

2009-10

1,86,000/-

46,500/-

46,500/-

Penalty @ 25% on 1,86,000/-

6.

125/2016

445/2013

15/01/16

2009-10

2,00,000/-

80,000/

80,000/-

Penalty @ 8% on 15,000/-

7.

126/2016

441/2013

15/01/16

2009-10

1,35,210/-

26,926/-

26,926/-

Penalty @ 25% on 26,926/- & 8% on 40,450

8.

127/2016

442/2013

15/01/16

2009-10

96,600/-

24,150/-

24,150/-

Penalty @ 25% on 96,000/-

9.

128/2016

439/2013

15/01/16

2009-10

1,86,000/-

46,500/-

46,500/-

Penalty @ 25% on 1,86,000/-

10.

129/2016

440/2013

15/01/16

2009-10

1,30,000/-

52,000/-

32,500/-

19,500/-

Penalty @ 40% on 1,30,000/-

4. Learned counsel for the revisionist referring to the provisions of the VAT Act

has contended that there existed no circumstance, which warranted the imposition of penalty upon the revisionist. He submitted that no provision of the VAT Act or the Rules framed thereunder required or obliged the revisionist to disclose the "date of manufacture" or the "batch number" of the soft drinks. He submitted that a discrepancy in the details falling under the aforementioned two heads did not justify the imposition of penalty. It was his submission that the articles in question were duly recorded and reflected in the Books of Account and carried a uniform rate of tax. It was submitted that there was no intention to evade payment of tax and therefore also the order of the assessing authority as affirmed by the Tribunal as well as the first appellate authority were rendered unsustainable. Learned counsel submitted that the authorities below have clearly erred in seeking to justify the imposition of penalty by placing reliance upon the judgment rendered by this Court in *M/S. Jagatjit Industries Ltd., Ghaziabad v. State of U.P. And Other*, [1997 U.P.T.C. 1011]. Seeking to distinguish the judgment rendered in *Jagatjit*, learned counsel submitted that the same came to be rendered upon a writ petition challenging an order of seizure. The Court, he submitted, was not considering the issue of imposition of penalty at all. Elaborating his submissions, learned counsel contended that admittedly the power of seizure is exercised on a prima facie satisfaction whereas in the case of imposition of penalty, it must be found that the omission on the part of the assessee is aimed at evasion of tax. Further, it was submitted that in *Jagatjit*, the Court was considering the seizure of a consignment of Indian made foreign liquor (IMFL), which in terms of the provisions of the U.P. Excise Act had to necessarily carry "batch numbers". It was submitted that in the case of *I.M.F.L.*, the mention and disclosure of "batch numbers" was directly connected to the payment of excise duty whereas there was no corresponding link between the mentioning of "batch number" with the payment of tax under the VAT Act. The distinguishing features and backdrop in which *Jagatjit* came to be decided, in the submission of the learned counsel for the revisionist, was duly noted by a learned Single Judge of this Court in *Commissioner of Trade Tax v. Central Distillery And Breweries Ltd., Meerut*, [1998 U.P.T.C.1218] which had proceeded to hold that a discrepancy in "batch numbers" would not justify a seizure of goods. Learned counsel further submitted that the imposition of penalty merely on an allegation of a discrepancy in the "batch numbers" did not find favour with this Court and referred to the judgments rendered in *M/S. Great Glen Distilleries And Wineries Ltd., Varanasi v. Commissioner of Sales Tax*, [1995 U.P.T.C.699] as well as *Sir Shadi Lal Enterprises Ltd., Shamli v. The Trade Tax Tribunal, Muzaffarnagar Bench, Muzaffarnagar & Others*, [1997 U.P.T.C.297]. Learned counsel further referred to a more recent judgment rendered by a learned Single Judge of this Court in *Nokia India Pvt. Ltd., 2005 NTN (28)*.

5. Learned counsel then lastly drew the attention of the Court to a judgment rendered by the Tribunal inter partes on 9 May 2012 wherein an imposition of penalty in identical circumstances was set aside by the Tribunal while recording that neither the VAT Act nor the Rules framed thereunder required a disclosure of

"batch numbers" and consequentially held that penalty had been wrongly imposed. He submitted that apart from the fact that the said judgment rendered by the Tribunal related to Assessment Year 2010-11, there was no distinguishing feature which may have justifiably weighed with the Tribunal to take a discordant view and uphold the levy of penalty in the facts of the present case.

6. Learned Standing Counsel refuting the above submissions contended that the assessing authority had proceeded to hold that apart from the two discrepancies mentioned above, some of the invoices had also not been pre-authenticated as was mandatorily required under the provisions of the Rules. He submitted that the assessing authority had recorded a categorical finding that the action of the revisionist was clearly aimed at evasion of tax and that the consignment of goods without a proper recordal in the Books of Accounts was clear and apparent. It was his submission that irrespective of the reasons assigned by the Tribunal, in light of the conclusion so recorded by the assessing authority, the imposition of penalty was clearly justified. It is these rival submissions which now fall for consideration.

7. Before proceeding ahead, a note on the order of the Tribunal and the reasons which weighed with it to sustain the imposition of penalty may be apposite. The Tribunal has noted that the explanation proffered by the revisionist attributing the discrepancies to the inadvertent mistakes of the additional labour loading the consignments was not worthy of credence. The Tribunal arrived at this conclusion holding that at the time of loading of the consignments, clerical staff is also present and that tax invoices are generated only after the goods have been loaded. The second reason which weighed with the Tribunal in refusing to accept the explanation preferred by the revisionist was that this discrepancy had occurred on more than one occasion. It held that the repetitive character of the discrepancies was an indicator of the fact that the stock register was not being maintained in accordance with the provisions of the Act. It then referred to the statutory requirement of the mention of "date of manufacturer" and "batch number" in terms of the provisions of the Food Safety Standards Act, 2006 (Act 2006). It accordingly proceeded to hold that the discrepancy in the "batch numbers" and the resultant loading of consignments in different vehicles clearly established that the stock register was not properly being maintained by the revisionist. Ultimately placing reliance upon the law laid down in Jagatjit, the Tribunal proceeded to uphold the orders passed by the assessing authority as well as the first appellate authority.

8. Section 48 of the VAT Act confers a power upon an authorised officer to seize goods in circumstances enumerated in sub section (1). The same reads as under:

" Section 48. Power to seize goods.

(1) An officer authorised under subsection (1) of section 45 shall have the powers to seize any goods-

(i) which are found in a dealer's place of business, vehicle, vessel or any other

building or place; or

(ii) which, such officer has reason to believe to belong to the dealer and which are found in any place of business, vehicle, vessel or any other building or place, but are not account for by the dealer in his accounts, registers or other documents maintained in the ordinary course of his business.

(iii) which are found in any place of business, vehicle, vessel or any other building or place, and such goods are accompanied by any tax invoice or sale invoice or any other document pertaining to value of goods, as the case may be, containing value of goods undervalued to the extent more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the said transaction had taken place, with intention to evade payment of tax."

9. The power to impose penalty stands enshrined in sub section (5) which reads as follows:

"(5) If such authority, after taking into consideration the explanation, if any, of the dealer or, as the case may be, the person in charge and after giving him an opportunity of being heard, is satisfied that the said goods were omitted from being shown in the accounts, registers and other documents referred to in subsection (1) or not traced to any bona fide dealer or not properly accounted for by any dealer or the documents issued by a bona fide dealer with respect to the accompanying goods contained wrong particulars or the goods are undervalued to the extent of more than fifty percent of the value of goods prevalent at the relevant time in the local market area where the said transaction had taken place, with intention to evade payment of tax, it shall pass an order imposing a penalty not exceeding forty per cent of the value of such goods, as he deems fit."

10. Section 54 which stands enshrined in Chapter VIII of the VAT Act enumerates the circumstances in which penalty would be imposed and also prescribes the amount of penalty which may be levied. Undisputedly, it is Item (14) which is relevant for our present purposes and the same is in the following terms:

14

Where the dealer or any other person, as the case may be,

i. (i) imports or attempts to import or abets the import of any goods, in contravention of the provisions under section 50 or section 51 with a view to evading payment of tax on sale of

40% of value of goods

(a) such goods; or

(b) goods manufactured, processed or packed by using such goods; or

i. (ii) transports, attempts to transport any taxable goods in contravention of any provisions of this Act;

11. The requirements of tax invoices are set forth in Rule 44 reads as follows:

"Rule 44. Requirements of tax invoice, sale invoice, bill, cash memo and purchase invoice. - (1) Every tax invoice referred to in subsection (1) of section 22 shall contain name and complete address of the selling dealer, name and address of its branch or depot from where goods are sold, Taxpayer's identification Number of selling dealer, tax invoice serial No., date of issue, signature of the person authenticating tax invoice, name and address of the purchaser, Taxpayers identification Number of purchaser, if any, description of goods, quantity or measure of goods, value of goods, other charges, if any, amount of discount, if any, rate of tax, amount of tax charged, total amount of tax invoice and signature of person issuing tax invoice."

Undisputedly, the levy of penalty is liable to be tested on the strength of the provisions engrafted in sub sections (1) and (5) of section 48. A deconstruction of sub section (1) would indicate that an assessee faces the specter of seizure in the following circumstances:

- (a) where the officer has reason to believe that goods belonging to the dealer,
- (b) are not accounted for by the dealer in his accounts, registers or other documents.

In terms of sub section (5) the authority proceeds to levy penalty upon being satisfied that-

- (a) the goods were omitted from being shown in the accounts; or
- (b) the goods are not traceable to any bona fide dealer; or
- (c) the goods are not properly accounted for by any dealer; or
- (d) the documents issued by any dealer contained wrong particulars; or
- (e) the goods are undervalued to the extent of fifty percent of the value of the goods prevalent at the relevant time in the local market.

Rule 44 mandates that the following particulars must find mention in a tax invoice:

- (a) name and complete address of the seller dealer
- (b) name and address of the branch or depot from where goods were sold
- (c) Taxpayers Identification Number (TIN) of the selling dealer
- (d) Tax invoice number and date of issue
- (e) Signature of the person authenticating the tax invoice
- (f) name and address of the purchasing dealer
- (g) TIN number of the purchasing dealer

- (h) a description of the goods
- (i) quantity or measure of the goods
- (j) value of the goods
- (k) rate of tax
- (l) amount of tax charged
- (m) total amount of tax invoice
- (n) signature of the person issuing the tax invoice.

12. As would be more than evident, Rule 44 nowhere requires the disclosure of the batch number or date of manufacture of the goods in question. The description of the goods would be soft drinks/aerated drinks. The requirement of mention of a batch number and date of manufacture are statutory requirements placed by and under a separate statute. One must also not lose sight of the fact that it is not the case of the respondents that the commodities loaded by the revisionist did not carry a batch number or date of manufacture. Their case simply is that the batch numbers/date of manufacture did not in some cases tally with the goods actually loaded upon a particular vehicle. In the opinion of this Court, when sections 48 and 54 speak of "wrong particulars" in a document or a transportation of goods "in contravention of any provision of this Act", it must necessarily relate to an omission or wrong mention of a particular mandated to be disclosed and mentioned under the provisions of the VAT Act or the Rules framed thereunder. Since the only omissions which triggered the impugned proceedings was an alleged discrepancy in the date of manufacture/batch number, the Court is of the opinion that this was not a case where it could be justifiably held that the goods were being transported in violation of the provisions of the VAT Act or the Rules. This more so when it is borne in mind that it is not the case of the respondents that the goods did not carry a date of manufacture/batch number and the only allegation was of a discrepancy/disconnect between the particulars finding mention in the tax invoice and the actual goods found on a vehicle.

13. The Court at this stage must also note a submission advanced by the learned standing counsel to the effect that some tax invoices had also not been pre-authenticated as required under the provisions of Rule 44, a fact which finds mention in the order of the assessing authority. As is evident from the order of the Tribunal, the Court finds that this omission, as is noted therein was only in respect of two invoices. As rightly contended by the learned counsel for the revisionist, this could not have justified an imposition of penalty on the value of the entire consignment. More importantly, this factor has not weighed with the Tribunal while it proceeded to uphold and affirm the orders of the assessing authority and the first appellate authority.

14. Having dealt with the peripheral issue, which was more technical in character,

the Court now proceeds to deal with the primary issue which pivots around the provisions of section 48 (5).

15. A close reading of sub section (5) establishes that while it sets out the circumstances in which penalty may be imposed [clauses (a) to (e) as extracted and deconstructed above] all the clauses are qualified and circumscribed by the words "with intention to evade payment of tax". The phrase "with intention to evade payment of tax" flows and attaches to each of the circumstance which attracts a levy of penalty under sub section (5). The Court however finds that the Tribunal has nowhere recorded its conclusion that the act of the revisionist was with an intent to evade payment of tax. As would be evident from a reading of sub section (5) the act or omission of the assessee must necessarily be aimed at intent to evade tax. Every bona fide mistake or accidental slip/omission is not intended by the statute to justify the imposition of a penalty.

16. A reading of the orders impugned would establish that no material or evidence was referred to or relied upon which may have even remotely established intent to evade payment of tax. The charge in this regard against the revisionist also does not find legs to stand on when one bears in mind the fact that all the articles of a particular consignment would bear the same rate of tax irrespective of the date of manufacture or batch number. Insofar as the recitals in the order of the assessing authority in this respect is concerned, suffice it to state that a close reading of his order establishes that it only reproduces the statutory requirements for a levy of penalty without referring to any material which may have justified a levy of penalty. More fundamentally, the Court finds that it was the categorical case of the revisionist that all the goods were duly accounted for in its Books of Account. The respondents do not rest their orders on any material or evidence, which may have dispelled this assertion. The Court further notes that the Tribunal while coming to the conclusion that the stock register was not properly maintained does not rely upon any evidence or particulars at all. The said conclusion is purely conjectural and based entirely upon the two discrepancies referred to above.

17. The other aspect which cannot be lost sight of by this Court is the order of the Tribunal itself made in respect of similar proceedings relating to Assessment Year 2010-11. While it is true that the principles of *res judicata* may not *ipso facto* apply to tax adjudications, at the same time issues which have been decided principally *inter partes* cannot be ignored. If the same discrepancies were found in Assessment Year 2010-11 to be insufficient to justify an imposition of penalty in that year, the Court finds no reason why the same principle would not apply to Assessment Year 2009-10. At least the assessing authority, the first appellate authority and the Tribunal do not record any finding as to why the said decision was not applicable or for that matter distinguishable.

18. The last issue which then remains is whether Jagatjit is an authority for the proposition that a discrepancy in batch numbers was a circumstance relevant for imposition of penalty. The Tribunal has proceeded on the basis that Jagatjit does

lay down this law. It is trite to note that a judgment is not to be read as Euclid's theorems. One of the primary rules of interpretation of judgments and which has been repeatedly so recognised is that the endeavour to understand the law declared in a judgment must be made bearing in mind the factual backdrop in which it came to be rendered. The true essence of a judgment must be extracted and understood bearing in mind the facts against which it came to be rendered. This principle itself is based on the Latin maxim "Secundum Subjectam Materiam. It is this basic principle which, in the opinion of this Court, has been completely lost sight of by the Tribunal.

19. Jagatjit came to be rendered by a learned Judge of the Court upon a difference of opinion between two learned Judges constituting a Bench of the Court. The issue in Jagatjit was whether the Court while exercising its powers under Article 226 of the Constitution should interfere with an order of seizure of goods. This is evident from the following extracts of the judgment:

"11. The question, therefore, for consideration is whether on the facts of the case any ground for interference by this Court was made out in exercise of its jurisdiction under Article 226 of the Constitution of India.

29. In the result, I respectfully agree with the view that on the facts and circumstances of the case this Court should decline to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India and the writ petition is dismissed. I regret my inability to subscribe to the view that the writ petition should be allowed and or the entire proceedings beginning with show-cause notice and terminating in the impugned orders of seizure and the order demanding security to the extent of Rs. 3,708 were liable to be quashed."

20. The second aspect of the case as noted above and which needs to be underlined is that Jagatjit was dealing with a case of seizure and not imposition of penalty. In fact the learned Judge in Jagatjit itself noted the distinction between the power to seize and levy penalty in the following terms:

"21.The test for imposition of penalty is more stringent than at the stage when the order directing the seizure of goods in terms of subsection (1) or (1A) of Section 13A may be passed on a prima facie belief based on direct or circumstantial evidence that the goods are not accounted for by the dealer or they are not traced to a bona fide dealer or it was doubtful that the goods are accounted for by any dealer."

21. The more fundamental distinction of Jagatjit is the facet of a statutory requirement of a batch number being mentioned on IMFL under the U.P. Excise Act and the absence of any such similar requirement under the VAT Act or the Rules. As noted above, no such requirement stands placed upon the revisionist under the VAT Act. In fact the authorities themselves noted that the requirement of mentioning the date of manufacture and batch number was one which stood imposed by virtue of the provisions of a separate statute.

22. In view of the above, this Court is of the firm view that Jagatjit is not an authority for the proposition that a wrong mention of/discrepancy in the batch number or date of manufacture would warrant the imposition of penalty under the VAT Act.

23. Additionally the Court finds that Jagatjit was duly noted and distinguished in Central Distillery. The learned Judge held:

"4. It is admitted that the goods were accompanied by the documents referred to above and the only ground of seizure was that the batch numbers of the goods were different. It has been held by this Court in *Lipton India Ltd. v. Commissioner of Sales Tax*, 1993 U.P.T.C. 368 and *M/s. Great Glen Distilleries & Wineries v. Commissioner of Sales Tax* 1995 U.P.T.C. 699 that the seizure of goods was not justified in cases where there is merely a difference of batch number of the goods. The learned Standing Counsel placed reliance on *M/s. Jagatjit Industries Ltd. v. State of U.P.*, 1997 U.P.T.C. 1011 in which the question was whether on the facts of that case the High Court should exercised its jurisdiction under Article 226 of the Constitution of India for quashing the notices of seizure. It was held that the necessary facts have to be found by the authorities under the Act and, therefore, the High Court should not interfere under Article 226 of the Constitution of India. The view taken by this Court in the aforesaid cases has neither been considered nor a different view taken. Therefore the aforesaid judgments are applicable to the facts of the present case in which the dealer preferred by appeal to the Tribunal in terms of Section 10(2) of the Act and the Tribunal has recorded a finding of fact that the goods were duly recorded in the books of account of the dealer. This finding is not open to challenge in the present revision petition."

The issue as to whether a discrepancy in the batch number would be sufficient to warrant the imposition of a penalty, as the learned Judge noted, had been negatived in *Great Glen* and other judgments. This is what the learned Judge observed in *Great Glen*:

"7.

.....The difference in the batch number mentioned in the excise export permit was of no consequence whatsoever. Firstly that was not a document required under Rule 83(4) and secondly the batch number did not in any manner make the goods different from what they were mentioned to be in the other documents. Rule 83 (4) of the Sales Tax Rules and Section 28A have to be read keeping in view the purpose for which they have been incorporated in the Sales Tax Act and the Rules. The purpose is to ensure proper recovery of sales tax. The batch number of a product has no relevance whatsoever, so far as sales tax is concerned. The goods being carried were cases of Ritz whisky and what was material was the number of cases and the bottles and the value thereof. The difference in batch number did not effect these things and the contention of the learned Standing Counsel that the difference in the batch did make the goods

different is thoroughly unacceptable."

24. Glen, it may be noted, was rendered prior in point of time to Jagatjit and itself followed an earlier judgment of the Court rendered in Lipton India Ltd. v. Commissioner of Sales Tax, 1993 UPTC 368. Neither of these judgments were noticed or referred to in Jagatjit.

25. Having dwelt upon Jagatjit and the distinguishing backdrop in which the same came to be rendered, the Court lastly takes note of what was held in Shadi Lal Enterprises where the learned Judge held:

"6. Batch number is only mentioned in only in Bill No. 25. In other papers accompanying the disputed consignment Batch number is not mentioned. There is no finding of the Tribunal that the goods despatched through the consignment in question there was omission, as shown in the accounts, registers and other documents. Penalty under these circumstances, could be imposed only when a categorical finding is recorded to this effect. There is nothing to show that the Tribunal examined the matter with reference to these stipulations. It is undisputed that if goods are shown in the accounts, registers and other documents, no penalty could be imposed. Consequently, the penalty imposed by the Tribunal must be held to be illegal on the face of it, and it has to be quashed."

26. For all the aforesaid reasons, the Court has no hesitation to hold that the imposition of penalty upon the assessee on account of a discrepancy in the batch numbers and date of manufacture was clearly unjustified and unwarranted in the facts and circumstances of the case. The orders of the assessing authority, the first appellate authority as also that of the Tribunal sustaining the levy of penalty upon the revisionist, therefore cannot be sustained.

27. Accordingly this revision shall stand allowed. The order of the assessing authority dated 31 July 2009, the order of the first appellate authority dated 19 August 2013 and that of the Tribunal dated 15 January 2016 are hereby set aside. The revisionist shall be entitled to the refund of the amounts deposited towards penalty. This claim of the revisionist shall be processed by the assessing authority in accordance with the provisions of the VAT Act expeditiously.