***Before S. J. Vazifdar, Chief Justice & Anupinder Singh Grewal, J.***

**M/S RELIANCE RETAIL LTD. —** *Petitioner*

*versus*

**STATE OF PUNJAB AND ANOTHER—** *Respondents*

**CWP No.20311 of 2015**

April 05, 2017

***Constitution of India, 1950 — Art. 226 — Punjab Value Added Tax Act, 2005 — S. 13 — Punjab Value Added Tax Rules, 2005 — Rl. 20 – Petitioner a dealer registered under the Punjab Value Added Tax Act, 2005 — Entitled to Input Tax Credit paid on purchase of gold under for manufacture of jewellery — Petitioner filed returns and claims ITC in respect of gold purchased during that year and adjusted the admissible tax credit against its output tax liability and carried forward the balance tax credit to the next year — Department issued show cause notice to petitioner for imposing penalty and interest — ITC on some purchases rejected — Stated it was not in accordance with Rule 20 read with S. 13(3) of the Act — Department imposed tax — First Appellate Authority and Value Added Tax Tribunal dismissed appeals — Petitioner sought declaration that Rule 20 of Punjab Value Added Tax Rules, 2005 was ultra vires S. 13(3) of Punjab Value Added Tax Act, 2005 in so far as it prescribes time limit of 90 days for claiming back Input Tax Credit for goods sent for job work — Quashing of order dated 6.7.2005 passed by Punjab Value Added Tax Tribunal dismissing petitioner's appeal also sought — Held — Rule 20 is not ultra vires Section 13(3) or otherwise invalid — Order of Tribunal set aside and matter remanded to Tribunal for deciding question afresh in view of judgment — Further held — Reason for prescribing time limit is to ensure that goods returned by the job workers after processing are the same as the goods that were sent by taxable person for further processing — Prescribing time limit makes it easier for department to ascertain whether the goods returned by the job workers after processing are the same as goods that were sent by the taxable person.***

***Further held — Rule 20 is only directory and mandatory — Authorities must not consider themselves bound by any rigid time frame or any specific period — Period of 90 days is not confined to the same assessment — Further held — Reasonable time must be***

***assessed not in vacuum but keeping in mind the scheme and purpose of the Act — It must be determined considering the possibility of ascertaining whether the goods returned by job workers are the very goods that were sent by the taxable persons to the job workers.***

*Held* that the reason for prescribing a time limit albeit directory as we will shortly indicate is evident. It is to ensure that the goods returned by the job workers after processing are the same as the goods that were sent by the taxable person for further processing on job work basis. The importance of the identity of the goods is obvious for the ITC was claimed in respect of those goods. If the goods returned by the job workers after processing are different from and less in value, than the goods sent for processing on job work basis, the taxable person would in effect be availing the ITC of a higher value than it was entitled to. Prescribing a time limit only makes it easier for the Department to ascertain whether the goods returned by the job workers after processing are the same as the goods that were sent by the taxable persons to the job workers for processing/further processing. Rule 20 is, therefore, not ultra-vires Section 13(3) or otherwise invalid.

(Para 14)

*Further held* that it must be held that the period of 90 days prescribed in Rule 20 is only directory and not mandatory.

(Para 15)

*Further held* that once it is held that the period of 90 days is only directory, the authorities must not consider themselves bound by any rigid time-frame or any specific period. There is no warrant for holding that the goods sent must be returned by the job workers during the same assessment year. That is not contemplated by Rule 20. The period of 90 days is not confined to the same assessment year. Indeed it cannot be. If for instance the goods are sent during the last few days of the assessment year or even on the last date of the assessment year, they cannot be expected to be returned by the job workers during the same assessment year. That is not even contemplated by the Rule.

(Para 17)

*Further held that* this brings us to an important aspect as to what is a reasonable time for the purpose of reversing the debit under sub section (3) of Section 13. Although what is reasonable time must depend on the facts of each case, in our view, the reasonable time must be assessed not in vacuum but keeping in mind the scheme and purpose of the Act itself. Keeping in view the purpose and the scheme of the

Act, we are inclined to hold that it must be determined considering the possibility of ascertaining whether the goods returned by the job workers are the very goods that were sent by the taxable persons to the job work. The ITC is availed of in respect of particular goods. The debit under section 13(3) is in respect of the goods that are sent to the job workers for further processing. The clear language of section 13(3) is that the debit is liable to be reversed only if those very goods are returned by the job workers after processing. This is clear from second sentence of section 13(3) that "if such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be restored…………………………………. The words "if such goods" in this sentence refer to the words "any goods" in the first sentence to section 13(3). Thus it is the goods sent by the taxable persons for further processing on job work basis that must be returned by the job workers to the taxable persons who sent them in order to entitle the taxable persons to have the ITC debited at the time of dispatch restored. What entitles the restoration of the ITC debited is the receipt of the goods from the job workers which were sent to the job workers by the taxable persons after processing. The time of receipt is not essential, for as we mentioned earlier, if the goods had not been sent to the job workers, the ITC credit would have remained with the taxable persons in any event. The importance of the time is only to facilitate the enquiry by the department as to whether the ingredients of section 13(3)are satisfied or not, namely, that it is the goods sent by the taxable persons that are returned by the job workers after processing. Whether the delay in return of goods beyond the period of 90 days is reasonable or not would depend upon whether the department's ability to ascertain these facts was jeopardized or prejudiced or not on account of the delay. If the department is not prejudiced in determining these issues, the delay beyond 90 days cannot be a ground for questioning the restoration of the ITC debited by the taxable persons on receipt of the goods from the job workers after processing.

(Para 19)

*Further held* that challenge to Rule 20 insofar as it prescribes the time limit of 90 days is rejected. It is,however, held that the same is directory and not mandatory. The Tribunal, therefore, applied the wrong test in determining whether the goods were returned in a reasonable time or not. It would be necessary, therefore, for the Tribunal to decide the question afresh in accordance with this judgment.

(Para 20)

Sandeep Goyal, Advocate and
Rishab Singla, Advocate
*for the petitioner.*

Rajinder Goyal, Additional Advocate General, Punjab
for the respondents.

**S.J. VAZIFDAR, CHIEF JUSTICE**

(1) The petitioner seeks a declaration that Rule 20 of the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as 'the rules') is ultra-vires Section 13(3) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') in so far as it prescribes the time limit of 90 days for claiming back the Input Tax Credit (ITC) reversed for the goods which have been sent on job work. The petitioner also seeks a writ of certiorari to quash the order dated 06.07.2015 passed by the Punjab Value Added Tax Tribunal dismissing its appeal for the assessment year 2008-09 upholding the levy of tax, interest and penalty.

(2) The petitioner is a dealer duly registered under the provisions of the Act as well as under the provisions of the Central Sales Tax Act, 1956 at Mohali (Punjab). The petitioner was amalgamated with M/s Reliance Fresh Ltd. with effect from 01.07.2013 and with effect from 30.07.2013 it changed its name to M/s Reliance Retail Ltd. The petitioner carries on its business of the manufacturer and sale of jewellery. It is admittedly entitled to Input Tax Credit (ITC) of the tax paid on purchase of gold used in the manufacture of jewellery. The petitioner filed returns for the assessment year 2008-09 in which it claimed ITC in respect of the gold purchased during that year and adjusted the admissible tax credit against its output tax liability and carried forward the balance tax credit to the next year.

(3) The respondents by a notice dated 29.08.2012 called upon the petitioner to show cause why penalty and interest be not imposed upon it under sections 56 and 32 of the Act. The notice stated that ITC on purchases amounting to about Rs. 8.23 crores was liable to be rejected as it was not in accordance with Rule 20 read with Section 13(3) of the Act. The petitioner responded to this show cause notice in writing and at the personal hearing. By an assessment order dated 15.11.2012 the respondents imposed tax, penalty and interest aggregating to Rs. 25,80,541/- upon the petitioner. The First Appellate Authority-Deputy Excise and Taxation Commissioner (Appeals)

dismissed the appeal by an order dated 14.06.2013. The Value Added Tax Tribunal, Punjab dismissed the appeal by an order dated 06.07.2015. The Tribunal noted that during the assessment year 2008-09, the petitioner claimed ITC on purchase of bullion of the value amounting to Rs. 24,57,78,897/-. However, bullion worth Rs. 8,23,326.38 was not received back by the petitioner from the job workers after it was processed and reconditioned within the period of 90 days stipulated in Rule 20 of the said Rules.

(4) The Tribunal noted the contentions on behalf of the petitioner that Rule 20 was merely directory and not mandatory and that the assessment order was time barred. The Tribunal noted that although the bullion was not received within 90 days of it having been sent to the job workers, it was received in the subsequent year. It was also contended on behalf of the petitioner that penalty in any event ought not to be charged inter-alia as the petitioner had no intention to evade or avoid the tax and had also disclosed all the facts. The Tribunal held:-

> "……………………………From the record produced by the appellants as well as the admissions made by them, it is apparent that the appellant had made the purchases and claimed ITC on the value of the bullion and the ornaments amounting to Rs.24,57,78,897/-. It is also a fact that the goods were sent by the appellant for job work in the year 2008-09 outside the State of Punjab. The goods worth Rs.8,23,326.38/- were neither received back within the stipulated period of 90 days nor the same were received during the tax period i.e. year 2008-09. It is not a case where the goods were received after job work within the margin of few days as prescribed in Rule 20 of the Rules. Had the bullion as well as the ornaments been received, after job work within the said financial year and not within 90 days the authorities would have considered the case of the appellant for condoning the delay, but in the present case, the appellant has submitted that the goods were received back in subsequent years and it is not definite when these goods were received back. Every year is an independent year and is to be assessed separately. Therefore, the goods which have not been counted for the year 2008-09, certainly, input tax credit was bound to be reversed.

> ……………………………….Irrespective of the fact and without commenting deep over the matter as to whether Rule 20 is directory or mandatory, it would be suffice to say that the delay in receiving the goods after job work for a few days, under special extra ordinary circumstances could be condoned, but in the present case goods were not received during the said financial year. Therefore, the ITC so claimed was bound to be reversed……………………………….."

(5) The Tribunal also held that the appellant had not led cogent evidence evidencing that the same goods have been received back after the job work. This aspect need not detain us for evidently the petitioner had infact led evidence in this regard even before the Assessing Authority. As Mr.Goyal, the learned counsel appearing for the petitioner rightly pointed out neither the Assessing Authority nor the First Appellate Authority held that the petitioner had not led cogent evidence that the same goods had been received back after the job work. As we are inclined to accept Mr.Goyal's submission regarding the interpretation of Rule 20 read with Section 13(3), we will be remanding the matter to the Tribunal for a fresh decision on-merits. At the hearing on remand this aspect would have to be considered afresh.

(6) This brings us back to Mr.Goyal's challenge to Rule 20.

(7) The relevant provisions of the Punjab Value Added Tax Act, 2005 read as under:-

> "**Section 2(*O*)**:- *"input tax"* in relation to a taxable person means value added tax (VAT), paid or payable under this Act by a person on the purchase of taxable goods for resale or for use **2(p)** *"input tax credit"* means credit of input tax (in short referred to as ITC) available to a taxable person under this Act; **2(v)** "prescribed" means prescribed by rules made under this Act;
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> **Section13**
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> **13(1)** A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:

Provided that such goods are for sale in the State or in the course of inter-State trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:

Provided further that a taxable person shall be entitled to partial input tax credit in any other event, as may be provided in this section in such manner and subject to such conditions as may be prescribed:

Provided further that if, purchases are used partially for the purposes specified in this sub-section and the taxable person is unable to identify the goods used for such purposes, then the input tax credit shall be allowed proportionate to the extent, these are used for such purposes, in the prescribed manner:

Provided further that input tax credit in respect of purchase tax paid or payable by a taxable person under section 19, shall be allowed subject to the conditions laid therein.

**13(2**) Input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four percent on purchase of goods –

(a) sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of territory of India; and

(b) used in manufacturing or in packing of taxable goods sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India.

**13(3)** Where a taxable person sends any goods as such or after being partially processed for further processing on job work basis, he shall debit the ITC by four percent of the value of such goods. If such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be restored. Such person shall, however, be required to produce proper evidence in the shape of records,

challans or memos or any other document evidencing receipt of such goods, whenever asked for.

**Section 26**

**26(1)** Every taxable person shall make self assessment of tax and shall file return for a period, within such time and in such form as may be prescribed.

**(2)** Every registered person shall make self assessment of tax and shall file return for a period, within such time and in such form as may be prescribed.

**(8)** A taxable person or a registered person, whose registration is cancelled under section 24, shall file such final return, as may be prescribed, within thirty days from the date of cancellation by the Commissioner or the designated officer, as the case may be.

**Section 31**

**31(6)** A casual trader, shall make the payment of tax in such manner, as may be prescribed, and shall immediately on completion of such business event or the period for which the permission was granted by the designated officer, whichever is earlier, report to the designated officer, about the total amount of sales or purchases, the tax payable thereon and the tax paid and shall deposit the amount of balance tax, if any, in the Government treasury within such time and in such manner, as may be prescribed. "

(8) The first proviso was amended w.e.f. 01.04.2016. We are, however, concerned with the unamended proviso which is what we have quoted earlier.

(9) Rule 20 reads as under:-

"**20. Eligibility of input tax credit on job work.--** Input tax credit shall be allowed, if any taxable goods as such or after being partially processed, are sent by a manufacturer, registered under the Act to a job worker for further processing, testing, repair, reconditioning or any other purpose, and it is established from the challan or relevant documents produced by the taxable person concerned that the goods in question have been received

back by him within a period of ninety days from the date of dispatch to the job worker."

(10) Mr. Goyal, the learned counsel appearing on behalf of the petitioner, submitted that Rule 20 insofar as it provides that ITC shall be allowed, if any, taxable goods are sent by the manufacturer to a job worker for further processing etc. and it is established that the goods have been received back within a period of 90 days from the date of dispatch to the job worker is illegal and contrary to Section 13(3) of the Act. It is only the prescription of the time limit of 90 days in Rule 20 that is challenged. Section 13(3) provides that a taxable person who sends any goods for further processing on job work basis, shall debit the ITC by 5% of the value of such goods. Section 13(3) further provides that if such goods after processing are received back by the taxable persons, the ITC debited at the time of dispatch shall be restored. Mr. Goyal submitted that sub section (3) does not prescribe a time limit for restoring the debit and, therefore, Rule 20 insofar as it prescribes the time limit is bad in law.

(11) Mr. Rajinder Goyal, the learned counsel appearing on behalf of the respondents on the other hand contended that under sub section (1) a taxable person shall be entitled to ITC "in such manner and subject to such conditions as may be prescribed…………………" and that, therefore, the legislature was entitled to prescribe the time limit within which the goods sent for job work must be received back.

(12) Section 13(1) deals with a taxable person's entitlement to ITC. It provides that a taxable person would be entitled to ITC subject to such conditions as may be prescribed. The legislature is, therefore, entitled to prescribe the conditions subject to which the taxable person shall be entitled to ITC. When a party fulfills the conditions, as may be prescribed, his entitlement to ITC is crystallized and vested in him. Sub section (3) of Section 13 does not curtail this entitlement to a taxable person to ITC. As far as the entitlement to ITC is concerned, the matter ends there. Sub section (3) deals with a different situation. It deals with a situation where the taxable person sends such goods for further processing on job work basis. In such a case the taxable person is bound to debit the ITC by 5% of the value of such goods. The ITC so debited is liable to be restored only if such goods after processing are received back by the taxable person. That the two situations are different is also evident from the fact that if for instance the taxable goods are not sent for further processing on job work basis, the taxable person would not be liable to debit the ITC claim in respect thereof.

Further the provisions of sub section (3) are not subject to such conditions as may be prescribed. The words in sub section (1) of Section 13 "subject to such conditions, as may be prescribed" are absent in sub section (3).

(13) Section 70 of the Act, however, entitles the State Government, by notification in the official gazette, to make rules for carrying out the purposes of the Act. One of the purposes of the Act is obviously to ensure that an assessee avails ITC in accordance with law. If one of the important purposes of the Act is to grant a taxable person the ITC, it would be an equally important purpose of the Act to ensure that this benefit is availed of in accordance with law. Rule 20, therefore, can be supported on the basis of Section 70 of the Act.

(14) The reason for prescribing a time limit albeit directory as we will shortly indicate is evident. It is to ensure that the goods returned by the job workers after processing are the same as the goods that were sent by the taxable person for further processing on job work basis. The importance of the identity of the goods is obvious for the ITC was claimed in respect of those goods. If the goods returned by the job workers after processing are different from and less in value, than the goods sent for processing on job work basis, the taxable person would in effect be availing the ITC of a higher value than it was entitled to. Prescribing a time limit only makes it easier for the Department to ascertain whether the goods returned by the job workers after processing are the same as the goods that were sent by the taxable persons to the job workers for processing/further processing. Rule 20 is, therefore, not ultra-vires Section 13(3) or otherwise invalid.

(15) Having said that, however, it must be held that the period of 90 days prescribed in Rule 20 is only directory and not mandatory. We need go no further in this regard than referring to an order under section 85 of the Act passed by the Excise and Taxation Commissioner, Punjab. Another assessee raised inter-alia the following question to be determined under section 85 of the Act:-

> "1. Whether Input Tax Credit debited on transfer of goods for job work can be restored if the goods are received back after a period of ninety days which is against the rule 20 of PVAT Act, 2005."
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> The order in so far as it is relevant reads as under:-
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> "Rule 20 regulates the provision of section 13(3) of the PVAT Act, 2005. This rule is directory in nature. No tax is

evaded if the goods are received after 90 days of sending the same for job work and are accompanied by relevant documents i.e. challan, invoice or any such documents as may show the same goods are being received after job work by the taxable person. Therefore at the most it can be considered as violation of rule which can be penalized under section 60 of the PVAT Act, 2005. Therefore, orders may please be passed in such a way that the taxable person had not to forego the input tax credit available to him without selling the goods or converting same into tax free goods."

..................................I have heard the arguments of the counsel and perused the relevant provision of the Act and rules. If the taxable person is able to establish that the goods which were sent for job work and for which input tax credit was debited are received back after a period of 90 days the ITC debited can be reversed provided the relevant documents which irrefutably prove that the goods which were sent for job work are being received back and are also submitted by the taxable person. Rule 20 is in the nature of regulatory provision for section 13(3) of the PVAT Act. Refer to the decision of Punjab and Haryana High Court in the case of M/s Stelco Strips Ltd. v. State of Punjab reported as 2009-33 PHT page 31 (Punjab and Haryana High Court) wherein it was held that the time period of 14 days prescribed under section 51(7) of the PVAT Act, 2005 is directory in nature; therefore, following this decision; rule 20 is also directory in nature. The designated officer can levy penalty under section 60 of the PVAT Act, 2005. Therefore, the questions raised are answered as below:-

(1) The amount of input tax credit debited in respect of taxable goods sent for job work and received back after a period of 90 days can be restored if the taxable person is able to prove with the help of documents that the same goods are received back. It can be accepted as a special case. The dealer should be able to prove/produce sufficient reasons for delay in getting goods back beyond the prescribed limit of 90 days. This delay should be of only few days under special extra ordinary circumstances.

> (2) If the taxable goods after job work are received back after a period of 90 days the provision of Section 60 of PVAT Act are to be revoked."

(16) The Tribunal has also proceeded on the basis that the period of 90 days in Rule 20 is directory and not mandatory. This is evident from the observation of the Tribunal that the petitioner did not receive the goods from the job workers within just a few days or within a reasonable time or during the course of the assessment year in question.

(17) Once it is held that the period of 90 days is only directory, the authorities must not consider themselves bound by any rigid time-frame or any specific period. There is no warrant for holding that the goods sent must be returned by the job workers during the same assessment year. That is not contemplated by Rule 20. The period of 90 days is not confined to the same assessment year. Indeed it cannot be. If for instance the goods are sent during the last few days of the assessment year or even on the last date of the assessment year, they cannot be expected to be returned by the job workers during the same assessment year. That is not even contemplated by the Rule.

(18) The tribunal also observed that the goods were not returned within a few days. We see no reason to restrict the right to claim a reversal of the debit under sub section 3 only if the goods are returned within a few days. They must be returned within a reasonable time.

(19) This brings us to an important aspect as to what is a reasonable time for the purpose of reversing the debit under sub section (3) of Section 13. Although what is reasonable time must depend on the facts of each case, in our view, the reasonable time must be assessed not in vacuum but keeping in mind the scheme and purpose of the Act itself. Keeping in view the purpose and the scheme of the Act, we are inclined to hold that it must be determined considering the possibility of ascertaining whether the goods returned by the job workers are the very goods that were sent by the taxable persons to the job workers. The ITC is availed of in respect of particular goods. The debit under section 13(3) is in respect of the goods that are sent to the job workers for further processing. The clear language of section 13(3) is that the debit is liable to be reversed only if those very goods are returned by the job workers after processing. This is clear from second sentence of section 13(3) that "if such goods after processing are received back by such person, the ITC debited at the time of dispatch, shall be

restored....................................” (emphasis supplied). The words “if such goods” in this sentence refer to the words “any goods” in the first sentence to section 13(3). Thus it is the goods sent by the taxable persons for further processing on job work basis that must be returned by the job workers to the taxable persons who sent them in order to entitle the taxable persons to have the ITC debited at the time of dispatch restored. What entitles the restoration of the ITC debited is the receipt of the goods from the job workers which were sent to the job workers by the taxable persons after processing. The time of receipt is not essential, for as we mentioned earlier, if the goods had not been sent to the job workers, the ITC credit would have remained with the taxable persons in any event. The importance of the time is only to facilitate the enquiry by the department as to whether the ingredients of section 13(3)are satisfied or not, namely, that it is the goods sent by the taxable persons that are returned by the job workers after processing. Whether the delay in return of goods beyond the period of 90 days is reasonable or not would depend upon whether the department’s ability to ascertain these facts was jeopardized or prejudiced or not on account of the delay. If the department is not prejudiced in determining these issues, the delay beyond 90 days cannot be a ground for questioning the restoration of the ITC debited by the taxable persons on receipt of the goods from the job workers after processing.

(20) In the circumstances, the challenge to Rule 20 insofar as it prescribes the time limit of 90 days is rejected. It is, however, held that the same is directory and not mandatory. The Tribunal, therefore, applied the wrong test in determining whether the goods were returned in a reasonable time or not. It would be necessary, therefore, for the Tribunal to decide the question afresh in accordance with this judgment.

(21) The petition is, therefore, disposed of by quashing the impugned order and remanding the matter to the Tribunal for determination of the appeal afresh. All the contentions on-merits are kept open.

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*J.S. Mehndiratta*