

**GST/CST & VAT : Gujarat VAT - Interlocking paving bricks and curb stones are bricks**



**[2018] 94 taxmann.com 272 (Gujarat)**

**HIGH COURT OF GUJARAT**

**State of Gujarat**

**v.**

**Super Tiles & Marbles (P.) Ltd.\***

**AKIL KURESHI AND B.N. KARIA, JJ.**

**R/TAX APPEAL NOS. 1158 OF 2013 AND 79 OF 2014**

**APRIL 27, 2018**

**Classification of goods (OR) - Section 7 of the Gujarat Value Added Tax Act, 2003 - Interlocking paving blocks and curb stone - Assessee was trading in interlocking paving blocks and curb stones - Whether interlocking paving blocks and curb stones in question were bricks falling under Entry No. 10(1) of Schedule II to Gujarat Value Added Tax Act - Held, yes [Para 25] [In favour of assessee]**

**FACTS**

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- The assessee was trading in interlocking paving blocks and curb stones.
- He was granted a contract for construction. In the process, he utilized the paver blocks which were manufactured by him himself.
- The Determining Authority, in exercise of his powers under section 80 of the Gujarat VAT Act, held that the interlocking paving blocks and curb stones were not bricks and they should be taxed under the residuary entry at a higher rate. He further held that the paving blocks used by the assessee in execution of the works contract did not bear the tax and, therefore, the benefit of composition of tax would not be available to the assessee.
- On appeal, the Tribunal held that interlocking paving blocks and curb stones were bricks falling within Entry No. 10(1) of Schedule II to the Gujarat VAT Act and should be taxed accordingly. It further, on the question of composition of tax, held that the requirement was that the goods used in execution of works contract should have borne tax and not that the transfer of property should also have borne tax. When the assessee used the taxable goods in execution of works contract, it cannot be said that he failed to comply the provisions of rule 28(8) of the Kerala VAT Rules.
- On appeal to High Court:

**HELD**

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- One may first deal with the question of composition of tax, since the issue is already covered by a recent judgment of the Gujarat High Court rendered in the case of *BSCPL Infrastructure Ltd. v. State of Gujarat* [Special Civil Application No. 13170 of 2013]. It was the case in which the assessee was awarded a contract for

construction of highway. The assessee was granted permission of composition of tax in terms of section 14A of the Gujarat VAT Act. The department noticed that in the execution of the works contract, the assessee utilized besides other material grit. Such grit was prepared by the assessee using blacktrap which was extracted by the assessee through mines taken on lease. According to the department, the assessee having not paid the tax on grit used for construction of road, the assessee had breached the condition of composition of tax. The relevant condition being the goods used in execution of the works contract should have borne tax. On such basis, the department had issued notice to the assessee why the assessee's permission for composition of tax not be cancelled. The High Court allowed the writ petition filed by the assessee. In view of the said judgment, the assessee was entitled to the benefit of composition of tax. [Paras 9, 10 and 11]

- Entry No. 10(1) of Schedule II to the Gujarat VAT Act includes bricks of all kinds including fly ash bricks, refractory bricks, eco bricks and hollow block bricks. In plain terms, the intention of the legislature is thus to include all kinds of bricks within the fold of this entry. The entry is consciously and advisably worded widely. [Para 16]
- The bricks as understood in common usage and parlance need not require any description. Use of the paver blocks also in the recent times has become quite common. From the literature provided by the parties, one gathers that such interlocking paver blocks are made of concrete. They are used for making footpaths, used in gardens, passenger waiting areas, bus stops and such other public spaces. These are prefabricated systematic blocks of definite sizes and shapes mostly come with self interlocking patterns. By combining these blocks in desired numbers, a footpath, a portion of ground, a waiting area or such like can be paved with minimum effort and with greater durability. When used in different shapes or colours one can also create design or patterns on the floors so paved. Besides being easy to install, they are also easy to remove in case there is a possibility of frequent installation and relaying of underground ducts, pipelines or wires or the likes. [Para 17]
- One of the Wikipedia articles supplied to the Court states that the pavings blocks are also known as brick paving. The main advantage of these bricks is that the same can be later on lifted up and replaced. This allows for remedial works under the surface without leaving a lasting mark once the paving has been replaced. They are used mainly for driveways, pavement, patios, town centers, precincts and road surfacing. These bricks are typically made of concrete or clay though other composite materials are also used. A clay brick has to be fired in a kiln to bake. The concrete brick has to be allowed to set. The concrete paving bricks are a porous form of bricks formed by mixing small stones, dyes, cement, sands and other materials in various proportions. Many of them also used recycled materials. [Para 18]
- In the case of *Advance Bricks Co. v. Assessing Authority* [1988 taxmann.com 1004](http://www.taxmann.com/1004), the Supreme Court referred to various sources to better understand the term brick which was not defined under the Haryana General Sales Tax Act. [Para 19]
- From such materials, it could be seen that the paver blocks are also sometimes referred to as paver bricks. They are getting increasingly more popular for ground paving purpose. They are used predominantly in paving footpaths, gardens, sidewalks, bus-stops and other public places. These paver bricks are superior to the conventional bricks in number of ways including the durability, the ease of laying

and removing. With the use of combination of shapes and colours, they can also be used for beautifying the place. One of the major advantages in use of these material is that these bricks are easy to remove enabling easy underground repair work. In other words, these paver blocks fulfil the same purpose as the conventional bricks would do insofar as levelling and paving of ground surface is concerned. These uses of paver blocks and the conventional bricks overlap and are in fact interchangeable. It is, however, true that these paver blocks are not known to be used for the construction of walls and buildings which use the conventional bricks and other eco friendly and hollow bricks could be used for. In terms of legal implications, what would be the effect of this facts may now examined. [Para 20]

- It is well settled principle that one has to give the widest amplitude to the entry in question. Only if one finds that the entry does not through such interpretation also include the product in question can be fall back on the residuary entry. In the process, one should apply the common parlance test. [Para 24]
- In view of the aforesaid, the Tribunal was correct in coming to the conclusion that paver blocks and curb stones are classifiable within Entry No. 10(1) of Schedule II to the Gujarat VAT Act. [Para 25]

## **CASE REVIEW**

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*BSCPL Infrastructure Ltd. v. State of Gujarat* [Special Civil Application No. 13170 of 2013] (para 11) followed.

## **CASES REFERRED TO**

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*Vyara Tiles (P.) Ltd.* [Tax Appeal No.79 of 2014] (para 8), *BSCPL Infrastructure Ltd. v. State of Gujarat* [Special Civil Application No.13170 of 2013] (para 9), *Advance Bricks Co. v. Assessing Authority* [1988 taxmann.com 1004 \(SC\)](#) (para 19), *Maruti Yeast India (P.) Ltd. v. State of U.P.* [2008] 14 VST 259 (SC) (para 21), *State of Maharashtra v. Bradma of India Ltd.* [2015] 140 STC 17 (SC) (para 22), *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978 taxmann.com 13 \(SC\)](#) (para 23) and *Asstt. Commissioner of (Head Quarters)-VAT Division v. H. H. Cement Products* [\[2016\] 71 taxmann.com 350 \(Kar.\)](#) (para 25).

**Ms. Shruti Pathak**, AGP *for the Petitioner.* **Uchit N. Sheth** *for the Respondent.*

## **JUDGMENT**

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**Akil Kureshi, J.** - Tax Appeal No.79 of 2014 was admitted for consideration of following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that interlocking paving blocks and curb stones are bricks falling within entry 10(1) of Schedule II to the Gujarat Value Added Tax Act, 2003 and should be taxed accordingly?"

2. Tax Appeal No.1158 of 2013 was admitted for consideration of following substantial questions of law:

- "(A) Whether on the facts and in the circumstances of the case, the Tribunal has rightly considered interlocking Paving Blocks as bricks covered U/e 10 (I) of Schedule-II of the Gujarat Value Added Tax Act, 2003 ?
- (B) Whether on the facts and in the circumstances of the case, the Tribunal has

rightly held that permission for lump sum tax under section 14A read with Rule 28(8) (vi-a)(2) of the Gujarat Value Added Tax Rules, 2006 ?"

3. The sole question in Tax Appeal No.79 of 2014 is the first question in Tax Appeal No.1158 of 2013, arise in similar background. Second question in Tax Appeal No.1158 of 2013 is an independent question. We may record brief facts at the outset.

4. In Tax Appeal No.79 of 2014, the respondent is trading in besides others, interlocking paving blocks and curb stones. The respondent was of the opinion that such interlocking paving blocks and curb stones are bricks falling in entry 10(1) of the schedule-II to the Gujarat Value Added Tax Act ('the VAT Act' for short). However, in order not to raise any future controversy, the assessee applied to the competent authority to determine this issue under section 80 of the VAT Act. The authority by an order dated March, 2009 held that the said product is not brick and should be taxed under the residuary entry at a higher rate. In his order, he relied on following factors:

- I. Paver blocks are used on the surface for decorative purpose and not for construction of walls and buildings.
- II. The dictionary meaning of word 'brick' given in Oxford dictionary describes it as a small rectangular block of sundray clay used in buildings which would not include the paver blocks.
- III. The predominant use of the paver blocks is for the floorings or for leveling the road or land. The product therefore can at best be described as tiles.

5. Aggrieved by the order of the Determining Authority, the assessee approached the Gujarat Value Added Tax Tribunal ('the Tribunal' for short). The Tribunal by the impugned judgment dated 15-06-2012 held that the paver blocks and curb stones are bricks covered under entry 10(1) of the schedule-II to the VAT Act.

6. In Tax Appeal No.1158 of 2013, respondent assessee is similarly engaged in dealing in paver blocks. Here also, assessee had applied before the Determining Authority under section 80 of the VAT Act contending that such product would be classified as brick. Simultaneously, he also raised an issue regarding composition of tax. The assessee was granted a contract for construction. In the process, the assessee utilized the paver blocks which were manufactured by the assessee itself. The question was, in such situation, would the assessee be entitled to the composition scheme in terms of section 14A of the VAT Act.

7. The Determining Authority decided both the questions against the assessee. As in the previous case it was held that the paver blocks are not bricks, on the question of composition of tax, he held that the goods used by the assessee in execution of the works contract did not bear the tax and therefore the benefit of composition of tax would not be available to the assessee.

8. This order of the Determining Authority the assessee challenged before the Tribunal. Tribunal by the impugned judgment dated 08-02-2013 held both the questions in favour of the assessee. On the issue of classification of the product, the Tribunal relied on the judgment in case of *Vyara Tiles (P.) Ltd.* (respondent in Tax Appeal No.79 of 2014). In the context of composition of tax, the Tribunal held that the requirement was that the goods used in execution of works contract should have borne tax and not that the transfer of property should also have borne tax. When the uses in the taxable goods in execution of works contract, it cannot be said that he failed to comply the provisions of Rule 28(8) of the VAT Rules.

9. We may first deal with the question of composition of tax since the issue is already covered by a recent judgment of this Court in Special Civil Application No.13170 of 2013 in case of *BSCPL Infrastructure Ltd. v. State of Gujarat*. It was the case in which the petitioner was awarded a contract for

construction of highway. The petitioner was granted permission of composition of tax in terms of section 14A of the VAT Act. The department noticed that in the execution of the works contract, the petitioner utilized besides other material, grit. Such grit was prepared by the petitioner using black-trap which was extracted by the petitioner through mines taken on lease. According to the department, the petitioner having not paid the tax on grit used for construction of road, the petitioner had breached the condition of composition of tax. The relevant condition being the goods used in execution of the works contract should have borne tax. On such basis, the department had issued notice to the petitioner why the petitioner's permission for composition of tax not be cancelled.

**10.** In this context, while allowing the petition, the Court observed as under:

"Reverting back to the interpretation of sub-rule [8] of Rule 28 of the VAT Rules, we may recall a crucial condition which the Department claims breach of is, if a dealer who is granted permission to composition of tax uses any taxable goods in execution of the works contract, such goods should have borne tax payable under the Act. In this context, we need to appreciate and apply the two terms viz., taxable goods and tax payable under the Act. A literal reading of this provision may lead to a situation where as in the case on hand a dealer uses goods which otherwise as per the definition of the term, can be categorized as taxable goods. The dealer, however, does not pay tax because he is not required to pay tax, and therefore, he would not have fulfilled the said condition of bearing the tax payable on use of taxable goods. However, we do not think this interpretation is either correct or reasonable or in any manner brings out the true legislative intent. In plain terms, what the legislature desired by framing the said provision is that a dealer who has been granted permission for composition of tax must have paid tax; as prescribed, upon consumption of taxable goods. This does not however mean that the dealer has to pay tax - whether such liability under the Act has arisen or not. It is in this context, we may understand the term tax payable under the Act. When the taxing event is sale of goods and such event has not arisen, there would be no question of tax becoming payable under the Act. This itself would be sufficient to dislodge Departments objection. We may, however, go a step further. The term taxable goods cannot be seen in isolation by reading the definition contained in Section 229 of the VAT Act. A commodity would become taxable goods when taxable event arises. Merely because upon sale of such goods, tax is prescribed which is not exempt under Section 5 of the VAT Act, and therefore, is taxable goods would not for the purpose of relevant portion of Rule 28 [8] of the Rules become taxable goods. The term taxable goods and tax payable under the Act have to be harmoniously construed. Only reconciliation possible is that the dealer is expected to pay tax when taxing event arises and not otherwise.

The issue can be looked from a different angle. While we do so, we may record that the Department has raised an erroneous objection that the petitioner had failed to disclose its modus of obtaining black-trap or grit, while applying for composition. Neither the Act nor the Rules require any such declaration. The petitioner cannot be expected to make declaration which was not called for. In this context, the question arises what would have happened had the petitioner made such a declaration while applying for composition or the Department was aware of the petitioners modus, while dealing with such an application. Would the authority be justified in rejecting such an application? In our opinion, the answer has to be in the negative since there is no provision under the Act or the Rules which debar a dealer from using self-manufactured inputs in execution of the works contract. The issue can be looked at from yet another angle. Even if the petitioner wanted to pay tax on such goods, there is no provision under the Act under which the petitioner could do so. Since the petitioner had not purchased the goods from market but had self-manufactured it from the mines taken on lease, there was no occasion to pay the tax. The Department obviously cannot argue that in such a situation, the petitioner cannot avail of composition facility at all. This would indirectly disqualify a contractor who uses self-manufactured products for home consumption in the course of

execution of works contracts from claiming composition of tax. There is no condition which will render any such contractor ineligible for composition scheme. Interpretation of the said rule, as advanced by the Department would bring about a situation where such a contractor would be rendered totally ineligible to apply for composition. Such an interpretation cannot be accepted. This would amount to sub-rule [8] of Rule 28 virtually governing the eligibility conditions for composition of tax which conditions are prescribed in Section 14A of the Act. Rule 28 [8] of the VAT Rules being a piece of subordinate legislation must yield to the provisions contained in the Act.

In the result, impugned notices are set-aside. Petition is allowed and disposed of accordingly."

**11.** In view of the said judgment, second question framed in Tax Appeal No.1158 of 2013 is answered in the affirmative and decided against the department.

**12.** Sole surviving question though merely differently worded in both the Tax Appeals, is with respect to the correct classification of the goods in question viz. interlocking paving blocks and curb stones. In this context, learned AGP for the appellant submitted that the Tribunal committed an error in holding that the said product would fall within the entry 10(1) of schedule-II which pertains to bricks because of following reasons:

- I. The dictionary meaning and common parlance understanding of bricks is entirely different from paver blocks.
- II. The 'paver blocks' as the term itself suggests are meant for entirely different use as compared to the bricks. Bricks are used for construction of walls and buildings, may also be used for paving purpose whereas the paver blocks are used only for leveling the ground and never for construction of walls and buildings.
- III. The material and the process used for manufacturing both the products is entirely different."

**13.** On the other hand, learned counsel for the assesseees jointly submitted that entry 10(1) of the schedule-II to the VAT Act is widely worded and must be given its full effect. The attempt of the Revenue to take the product to the residuary entry is completely unjustified when specific entry is available. It was contended that with extending technology and passage of time, new uses and meanings of the products may come about which must be given effect while interpreting different entries from time to time. Merely because the paver blocks have shapes different than conventional shapes of the bricks, does not mean that two products are entirely different.

**14.** Both sides have relied on certain materials as well as decisions of the Courts to which reference would be made at the appropriate stage.

**15.** Entry 10(1) of the schedule-II to the VAT Act reads as under:

10. (i) Bricks of all kinds including fly ash bricks refractory bricks, eco bricks and Four paise in the  
hollow block bricks (ii) Roofing tiles known as Manglori Nalia rupee

**16.** This entry thus, includes bricks of all kinds including fly ash bricks, refractory bricks, eco bricks and hollow block bricks. In plain terms, the intention of the legislature is thus to include all kinds of bricks within the fold of this entry. The entry is consciously and advisably worded widely.

**17.** The bricks as understood in common usage and parlance need not require any description. Use of the paver blocks also in the recent times has become quite common. From the literature provided by the counsel for the parties, we gather that such interlocking paver blocks are made of concrete. They are used for making footpaths, used in gardens, passenger waiting areas, bus-stops and such other public

places. These are pre-fabricated systematic blocks of definite sizes and shapes mostly come with self interlocking patterns. By combining these blocks in desired numbers, a footpath, a portion of ground, a waiting area or such like can be paved with minimum effort and with greater durability. When used in different shapes or colours one can also create design or patterns on the floors so paved. Besides being easy to install, they are also easy to remove in case there is a possibility of frequent installation and relaying of underground ducts, pipelines or wires or the likes.

**18.** One of the Wikipedia articles supplied to us states that the pavings blocks are also known as brick paving. The main advantage of these bricks is that the same can be later on lifted up and replaced. This allows for remedial works under the surface without leaving a lasting mark once the paving has been replaced. They are used mainly for driveways, pavement, patios, town centers, precincts and road surfacing. These bricks are typically made of concrete or clay though other composite materials are also used. A clay brick has to be fired in a kiln to bake. The concrete brick has to be allowed to set. The concrete paving bricks are a porous form of bricks formed by mixing small stones, dyes, cement, sands and other materials in various proportions. Many of them also used recycled materials.

**19.** In case of *Advance Bricks Co. v. Assessing Authority*, [1988 taxmann.com 1004](http://1988taxmann.com/1004) the Supreme Court referred to various sources to better understand the term brick which was not defined under the relevant statute i.e. Haryana General Sales Tax Act and observed as under:

"The term 'brick' has not been defined in the Act. The High Court has adopted the definition given in the order, where it has been defined as 'piece of burnt clay having geometrical shape fixed in a kiln'. It is not disputed that the order has nothing to do with the Act. In the absence of a statutory definition of the term 'Brick', the common parlance meaning of the word as found in dictionaries has to be accepted. (See *Lilawati Bai's case* 1957 SCR 721 and *Gajraj Singh's case* [1964] 7 SCR 205. Counsel for the appellant also relied upon the decisions of this Court in the cases of *Dy. Commissioner, Sales Tax. v. PIO Food Packed*, [1980] 3 SCR 1271 and *Indian Carbon Ltd. v. Superintendent of Taxes, Gauhati*, [1972] 1 SCR 3 16 in support of his submissions. According to Collins English Dictionary 'brick' means 'a rectangular block of clay mixed with sand and fired in a kiln or baked by the sun, used in building construction'. New Webster's Dictionary carries the meaning of the word as: 'a block of clay usually rectangular, hardened by the sun or by burning in a kiln and used for building, paving etc.' According to the Oxford English Dictionary 'brick' means 'a substance formed of clay, kneaded, moulded, and hardened by baking with fire, or in warm countries and ancient times by drying in the sun'. Encyclopaedia Britannica indicates that 'after the bricks are formed, they must be dried to remove as much free water as possible. Drying, apart from sun-drying, is done in drier kiln with controlled, draft and humidity'."

**20.** From such materials, it could be seen that the paver blocks are also sometimes referred to as paver bricks. They are getting increasingly more popular for ground paving purpose. They are used predominantly in paving footpaths, gardens, sidewalks, bus-stops and other public places. These paver bricks are superior to the conventional bricks in number of ways including the durability, the ease of laying and removing. With the use of combination of shapes and colours, they can also be used for beautifying the place. One of the major advantages in use of these material is that these bricks are easy to remove enabling easy underground repair work. In other words, these paver blocks fulfill the same purpose as the conventional bricks would do insofar as levelling and paving of ground surface is concerned. These uses of paver blocks and the conventional bricks overlap and are in fact interchangeable. It is however true that these paver blocks are not known to be used for the construction of walls and buildings which use the conventional bricks and other eco friendly and hollow bricks could be used for. In terms of legal implications, what would be the effect of this facts, may now be examined.

**21.** In case of *Maruti Yeast India (P.) Ltd. v. State of U.P.* [2008] 14 VST 259 (SC), the Supreme Court



in the context of interpretation of an entry in a sales tax, held and observed as under:

"42. It is now well-settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort.

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We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

**22.** In case of *State of Maharashtra v. Bradma of India Ltd.* reported in 140 STC 17 [SC], the Court held and observed as under:

"44. We are of the opinion that the High Court was wrong. Both the Tribunal and the High Court commonly enunciated the principle that a specific entry would override a general entry. In addition we would add, and as has been held in *CCE v. Wood Craft Products Limited* 1995 (3) SCC 454, 462, resort has to be had to the residuary heading only when a liberal construction by the specific heading cannot cover the goods in question. The language of Entry 97 (b) clearly shows, by use of the phrase "other than those specified elsewhere" that it is not only a residuary entry but also that electronic systems, instruments etc. may be classified under other entries. Entry 90 on the other hand does not contain any words of limitation. The items mentioned therein would cover every species thereof irrespective of the mode of their operation. Cash registering machines are specifically mentioned. In the absence of any limitation or qualification as to the different kinds of cash registering machines, there is no reason to read in any such qualification and limit the entry to particular kinds of cash registering machines. It is significant that by contrast, data processing machines have expressly excluded computers. Were it not so excluded, computers would have also fallen within Entry 90. In fact computers are separately dealt with Entry 97(a). But the exclusion of computers from data processing machines would indicate that the items mentioned in Entry 90 are generic covering all species of such items. Given the language of the two entries we fail to understand how the High Court could have come to the conclusion that Entry 97(b) was the specific entry and that Entry 90 was the general entry. Such an interpretation goes against the express language of the two entries."

**23.** In case of *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978 taxmann.com 13 \(SC\)](#) it was observed that it is well settled that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in their common parlance.

**24.** From the principles emerging from the above noted judgments, we would have to give the widest amplitude to the entry in question. Only if we find that the entry does not through such interpretation also include the product in question can be fall back on the residuary entry. In the process, we would apply the common parlance test.

**25.** Applying all these principles and on the basis of the usage and the purpose of manufacturing both the products, as also looking to the language used in the entry, we hold that the Tribunal was correct in coming to the conclusion that paver blocks and curb stones are classifiable within entry 10(1) of Schedule II to the Gujarat Value Added Tax Act. We are conscious that Division Bench of Karnataka High Court in case of *Asstt. Commissioner of (Head Quarters)-VAT Division, v. H. H. Cement Products* [\[2016\] 71 taxmann.com 350](#) has taken a contrary view. However, it was pointed out to us that against said judgment, the aggrieved assessee had filed Special Leave Petition. Supreme Court had permitted them to withdraw the petitions making clear that it will be open for them to produce evidence before the



statutory authorities and the order of the High Court will not come in the way of the statutory authority to take an independent view. Essentially by this order therefore, the Supreme Court localized the effect of the judgment of the Karnataka High Court. Despite the view of the Karnataka High Court, if the assessee or other similarly situated dealers, could produce the materials before the Statutory authority to canvass that the paver blocks are nothing but the bricks, the authority could take an independent view.

**26.** In the result, the remaining questions are also answered against the Revenue. Both the Tax Appeals are dismissed.

s.k. jain

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\*In favour of assessee.