

Government of Jammu and Kashmir  
**Finance Department**  
Civil Secretariat, J&K, Srinagar/Jammu

Subject: - Representation of M/s Hindustan Coca Cola Beverages Pvt. Ltd., 47-50A Industrial Extension Area, Gangyal, Jammu-180010.

**Government order No:- 18 -FD of 2023**  
**Dated:- 28 - 01 - 2023**

*Whereas*, for smooth implementation of Goods & Services Tax, the Finance Department granted Amnesty for settlement of unresolved issues in the old Tax regime vide Government order no. 39-F of 2018 dated 05.02.2018 subject to payment of admitted, assessed/re-assessed principal tax upto the accounting year 2016-17 in three equal installments. One of the important and significant conditions for availing the benefit of aforesaid amnesty was withdrawal of cases filed by the dealers challenging the orders passed under any of the provisions of the J&K VAT Act, 2005. Clause-6 of Annexure-A (Part-I) appended to Government Order No. 39-F of 2018 dated 05-02-2018 reads as under: -

“6. In respect of the cases where the dealers have challenged the orders passed under any section of the Jammu and Kashmir Value Added Tax Act, 2005(now repealed), before any Appellate Authority or Court(s), the benefit of scheme shall be available subject to the condition that the concerned dealer files an affidavit before the Jurisdictional Authority, averring that he has filed an application for withdrawal of such case(s) before any Appellate Authority or Court(s). The final order of withdrawal from the Appellate Forum or Court(s), as the case may be, shall be submitted along with 2<sup>nd</sup> installment due, failing which the dealer shall be disqualified from the scheme .”

*Whereas*, M/s Hindustan Coca Cola Beverages Pvt. Ltd. (M/s HCCBPL for short) has filed Letters Patent Appeal (LPAOW) No.48/2007 before the Division Bench of the Hon'ble High Court of J&K and Ladakh at Jammu wherein judgment dated 11.09.2007 passed by the Hon'ble Single Judge, denying exemption from payment of sales tax under the J&K GST Act, 1962 to M/s HCCBPL w.e.f. 01.04.2005 i.e. after coming into force of J&K Value Added Tax Act, 2005, has been challenged; and

*Whereas* during the pendency of the aforesaid LPA, M/s HCCBPL approached the Division Bench of the Hon'ble High Court by filing an application IA No.02/2018 in LPAOW 48/2007 seeking *ad-interim* measure of permitting it to apply under amnesty scheme and deposit the first installment according to the terms and conditions of the scheme without insisting for withdrawal of LPA. The Division Bench of the Hon'ble High Court of J&K and Ladakh vide order dated 11-05-2018 directed that *“the appellant shall be permitted to apply under the amnesty scheme and deposit the first installment without prejudice to the rights of the parties and the respondents shall not insist for withdrawal of the appeal filed by the appellant and the*



*claim of the appellant shall be processed under the aforesaid Scheme till the next date of hearing.* M/s HCCBPL in terms of order dated 11-05-2018 read with order dated 15-05-2018 passed by the Hon'ble High Court deposited first installment of principal tax amounting to Rs. 1,88,48,672/- on 16-05-2018; and

*Whereas,* the State Taxes Department filed an application I.A. No. 01/2019 for vacation of order dated 11-05-2018. After the filing of application for vacation of order dated 11-05-2018, the dealer M/s HCCBPL deposited second installment of Rs. 1,88,48,672/- on 31-01-2019; and

*Whereas,* the Division Bench of the Hon'ble High Court of J&K and Ladakh considered the application for vacation of order dated 11-05-2018 and after hearing the rival contentions of the parties was pleased enough to vacate the interim order dated 11-05-2018 vide order dated 16-05-2019 by holding and observing that ***"it cannot be permitted to claim benefit under the amnesty scheme"***; and

*Whereas,* M/s HCCBPL thereafter filed Review Petition RP No. 42/2019 seeking review of order dated 16-05-2019. The said Review Petition was contested by the department and the Hon'ble High Court vide order dated 10-03-2022 dismissed the Review application with liberty to M/s HCCBPL ***"to avail all options including seeking of refund of the money deposited or for extension of time for submitting the withdrawal order or to get the pending appeals decided"***. In this order dated 10-03-2022 the Division Bench in Para 7 has categorically held as under: -

***"7. There is no dispute to the fact that the Scheme clearly provides for the submission of the withdrawal order for seeking benefit under the Amnesty Scheme and if the withdrawal order is not submitted along with the second installment, the applicants shall be deemed to be disqualified."***

*Whereas,* M/s HCCBPL has preferred a representation dated 01/06/2022 before the Finance Department requesting for extension of time for submission of withdrawal order of pending appeal as required under the amnesty scheme and in the event the extension is not granted, refund of an amount of Rs. 3,76,97,344/- deposited under the amnesty scheme; and

*Whereas,* the representation filed by M/s HCCBPL has been examined in the light of the provisions of amnesty scheme promulgated vide Government Order No. 39-F of 2018 dated 05.02.2018. Clause 6 of Annexure-A (Part-I) appended to Government Order No. 39-F of 2018 dated 05-02-2018 unambiguously and in explicit terms laid down that the benefit of amnesty scheme shall be available subject to the condition that the concerned dealer files an affidavit before the Jurisdictional Authority, averring that he has filed an application for withdrawal of such case(s) before any Appellate Authority or Court(s) and the final order of

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withdrawal from the Appellate Forum or Court(s), as the case may be, shall be submitted along with 2<sup>nd</sup> installment due, failing which the dealer shall be disqualified from the scheme. There can be no exception to the aforesaid provision of clause 6 and rightly so, because even the Hon'ble High Court has not agreed to the contention of HCCBPL in orders dated 16.05.2019 and 10.03.2022 to avail amnesty without withdrawal of the LPA; and

*Now, therefore,* keeping in view the aforesaid facts and circumstances, particularly, in view of the order dated 16-05-2019 passed by the Hon'ble High Court holding/observing that *M/s HCCBPL cannot be permitted to claim benefit under the scheme without withdrawing the appeal* and order dated 10.03.2022 passed by the Hon'ble High Court holding that *there is no dispute to the fact that the Scheme clearly provides for the submission of the withdrawal order for seeking benefit under the Amnesty Scheme and if the withdrawal order is not submitted along with the second installment, the applicants shall be deemed to be disqualified*, the claim of HCCBPL sans merits, as time for submission of withdrawal of pending appeal cannot be extended due to the fact that aforementioned amnesty scheme stands already closed on 31.10.2020. Since, M/S HCCBPL has not complied with the conditions mandatory for the grant of amnesty, within the period the scheme was operative, the representation of the applicant dealer, after due consideration, has been found devoid of merit and, accordingly, rejected.


**By order of the Government of Jammu and Kashmir.**

Sd/-  
(Nitu Gupta)JKAS  
Secretary  
Finance Department

No. FD-ST/123/2022-03  
Copy to the:-

Dated:-28 -01-2023

1. Secretary to the Government, Department of Law, Justice & PA, Civil Secretariat, J&K.
2. Commissioner, State Taxes, J&K.
3. Private Secretary to Administrative Secretary, Finance Department.
4. M/s Hindustan Coca Cola Beverages Pvt. Ltd., 47-50A Industrial Extension Area, Gangyal, Jammu-180010.
5. Government Order (w.2.s.c.)
6. I/C Website Finance Department.

  
28/1/2023  
Deputy Secretary to the Government  
Finance Department