

**Jindal Drugs Limited, a Company Incorporated Under the Provisions of the Companies Act, 1956 and Mr. Vijay Jindal Vs. the State of Maharashtra and the Union of India (Uoi)**

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**Court :** Mumbai

**Decided On :** May-02-2003

**Reported in :** 2003(3)ALLMR9; 2003(4)BomCR14; (2002)2BOMLR888; 2004(1)MhLj87

**Judge :** V.C. Daga and ;J.P. Devadhar, JJ.

**Acts :** Bombay Sales Tax Act, 1959 - Sections 2(13), 2(28), 3, 3(4), 8 and 22; [Companies Act, 1956](#); Maharashtra Tax Laws (Levy) (Amendment) Act, 1998; Transfer of Property Act - Sections 130

**Appeal No. :** Writ Petition No. 1580 of 1998

**Appellant :** Jindal Drugs Limited, a Company Incorporated Under the Provisions of the Companies Act, 1956 and Mr.

**Respondent :** The State of Maharashtra and the Union of India (Uoi)

**Advocate for Def. :** B.B. Sharma, Adv.

**Advocate for Pet/Ap. :** P. Shah and ;A. Dighe, Advs., i/b. D.S.K. Legal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

V.D. Daga, J.

1. The petitioners have raised pure question of law in this petition. The petitioners contend that credit in the Duty Entitlement Pass Book ('DEPB' for short) issued under the Export Import Policy 1977-2002 ('said Policy' for short) cannot be treated as 'goods', as such not classifiable under Schedule 'C' of the Bombay Sales Tax Act, 1959.

FACTUAL SCORE

2. The first petitioner is a company incorporated under the [Companies Act, 1956](#) engaged in the manufacture, sale and export of pharmaceuticals, dugs, dyes and dye intermediates. The first petitioner is a trading house as contemplated under the said Policy.

3. If one turns to the aforesaid policy, the said Policy (Chapter-VII) provides for the Duty Exemption Scheme consisting of Duty Free Licence and Duty Entitlement Pass Book. The objective of the DEPB is to neutralise the incidence of basic customs duty on the import content of the export product. The neutralisation is to be provided by way of grant of duty credit against the export product. The duty credit under the said Scheme is calculated by taking into account the deemed import content of the said export product as per Standard Input Output Norms and determines basic customs duty payable on such deemed imports. The value addition

achieved by export of such product is also taken into account while determining the rate of duty credit under the Scheme. Under the DEPB Scheme an exporter is eligible to claim credit as a specified percentage of FOB value of exports made in freely convertible currency. The credit is available against such export products and at such rate as may be specified by the Director General of Foreign Trade by public notice issued in this behalf. Any item except those appearing in the Negative List of Imports is allowed for import without payment of basic customs duty, special duty of customs as well as additional duty of customs against the credit under the DEPB Scheme. The holder of DEPB shall have an option to pay additional customs duty, if any, in cash as well.

4. The petitioners availed the benefit and incentives of the Duty Exemption Scheme under the DEPB issued under the said Policy. These benefits and incentives accrued and vested in the petitioners are transferable for consideration as per paragraphs 7.16 of Chapter-VII of the said Policy.

5. The first respondent, State of Maharashtra by an ordinance dated 1st May 1998 has inter alia sought to amend Schedule 'C' of the Bombay Sales Tax Act, with retrospective effect from 1st April 1997, by adding Item 26(6) to include tax on 'Credit of Duty Entitlement Pass Book' at 4% Schedule 'C' to the Bombay Sales Tax Act prescribes the goods, other than declared goods, the sale or purchase of which is subject to sales tax or purchase tax, and the rates of tax. The petitioners impugned the validity of the said amendment to the Bombay Sales Tax Act by way of present petition.

#### STATUTORY SCHEME:

6. In order to understand the challenge set up in the petition, it is necessary to examine the scheme of the Sales Tax legislation. The Bombay Sales Tax Act was introduced in 1959. Section 3 thereof imposes the incidence of tax and provides for the tax being payable by every dealer whose turnover either of all sales or purchases has exceeded or exceeds the relevant limit specified in Sub-section (4) and requires the dealer to pay tax under this Act on the turnover of sales and on turnover of purchases. 'Sale' has been defined in Section 2(28) to mean a sale of goods made within the State for cash or deferred payment or other valuable consideration and includes supplies made by certain categories of persons, and the words 'sell', 'buy' and 'purchase' with all the grammatical variations and cognate expressions are to be construed accordingly. 'Goods' has been defined in Section 2(13) to mean every kind of movable property (not being newspapers or actionable claims or money or stocks, shares or securities) and includes growing crops, grass and trees and plants (including the produce therein) and all other things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

7. The Scheme of the aforesaid Act provides for levying of sales tax on turnover of sales of goods as per the schedule to the said Act. Chapter IV of the Act provides for registration of dealers and for authorisations, recognitions and permits as set out therein. Section 22 in this Chapter contemplates that no dealer shall, while being liable to pay tax, carry on business as a dealer unless he possess a valid certificate of registration. Chapter V contemplates every registered dealer furnishing returns for such periods to such authority as may be prescribed, and further provides for assessment, re-assessment and imposition of penalty in certain cases. Chapter VI provides for every dealer liable to pay tax under the Act and every other dealer required so to do by the Commissioner by notice served on him in the prescribed manner to keep a true account of the value of the goods purchased or sold by him. Chapter VIII provides for offences and penalties. The schedules to the Act give the rates at which tax is to be levied.

8. The State Government now seeks to levy sales tax on the transfer of credit in the DEPB as goods. By the Maharashtra Tax Laws (Levy & Amendment) Act, 21 of 1998, Sub-entry (6) was added to Entry No. 26 in Schedule 'C' to the Bombay Sales Tax with effect from 1st April 1997. Sub-entry (6) of Entry 26 reads as under:

'(6) Credit of Duty Entitlement Pass Book'.

9. The definition of goods under Section 2(13) of the Bombay Sales Tax Act, if x-rayed, covers all kinds of

movable goods, however, specifically excludes the following:

- (a) Newspaper;
- (b) Actionable claim or money;
- (c) Stock, shares or securities.

## THE ARGUMENTS

10. Although the petitioners have raised several grounds in the writ petition in support of their submissions but those grounds were not urged before us. The petitioners urged a sole contention that the credit entry in the DEPB cannot be said to be a 'goods', as such not classifiable under Schedule 'C' of the Bombay Sales Tax Act.

11. The learned counsel appearing for the petitioners contends that Schedule 'C' of the Bombay Sales Tax Act sets out goods (other than declared goods), the sale or purchase of which is subject to sales tax or purchase tax and the rates of tax. Section 8 of the Bombay Sales Tax Act provides for the levy of value added sales tax on goods specified in Schedule 'C'. Hence, according to the petitioners, pre-requisite for levy of tax under Section 8 and Schedule 'C' is that it can only be levied on goods. In the submission of the petitioners, credit in the DEPB is not goods and hence not classifiable under Schedule 'C'. The petitioners, thus, contend that levy of tax on credit of DEPB is without authority of law and the same is illegal, null and void.

12. The petitioners relying on Section 2(13) of the Bombay Sales Tax Act contend that the said section defines 'goods' as 'every kind of movable property (not being newspapers or actionable claims or money or stocks, shares or securities)...'. As such, the grant of duty credit against the export product in the DEPB falls within ambit of 'money' in Section 2(13) and thus stands excluded from the ambit of 'goods'. In the premises, in their submission, inclusion of credit in the DEPB in Schedule 'C' of the Bombay Sales Tax Act is arbitrary in nature and beyond the provisions of the Act. In other words, in the submission of the petitioners, the credit in the DEPB is not goods. The submission is, credit in the DEPB is equal to credit in the pass book in respect of bank account, where debits and credits are reflected, as per the operation of the account, as such, such credit would fall within the sweep of the word 'money' which stands excluded from the definition of goods. According to the petitioners, in DEPB credits are made on completion of exports and debits are made on utilisation thereof or on payment of import duty, as such credit in the DEPB is nothing but money. Hence transfer of credit in the DEPB is nothing but transfer of money and, therefore, not goods as contemplated or defined under Section 2(13) of the Bombay Sales Tax Act.

13. Alternatively, learned counsel appearing for the petitioners contends that in the event of this Court holding that credit in the DEPB is not a cash, then in that even such a credit has to be treated as 'debt' owed by the Central Government to the holder of the DEPB. The Central Government to the extent of credit entry is indebted to the holder of the DEPB. The Central Government is bound to liquidate the said debt against import duty payable for future imports within the specified time, failing which action at law is necessary, as such it would be nothing but an actionable claim. If that be so, the credit in the DEPB cannot be said to be 'goods' within the meaning of Section 2(13) of the Bombay Sales Tax Act.

14. In support of the aforesaid submissions, learned counsel for the petitioners placed reliance on the judgments of the Apex Court in the case of Kesoram Industries & Cotton Mills Ltd. v. C.W.T. (Central) , : [1966]59ITR767(SC) and Raymond Synthetics Ltd. v. Union of India, : [1992]1SCR481 and Union of India v. Air Foam Industries (P) Ltd. , AIR 1974 SC 1266 and tried to spell out the meaning of the word 'debt'. He also tried to distinguish the judgment of the Delhi High Court in the case of Philco Exports v. Sales Tax Officer in C.W.P. No. 3997 of 2001 dated 24th July 2001, which has been pressed into service by the respondents through their written submissions.

15. Per contra, the learned counsel for the respondents urged that entry in the DEPB is part of the duty

exemption schemes, a part of Export Policy framed by the Government of India. The Duty Free Licence as well as the DEPB are freely transferable. The DEPB is valid for a period of 12 months from the date of issue and can be utilised for the particular purposes as set out in the EXIM policy for the time being in force. He submits that when a dealer gets credit into his DEPB, neither the sales tax nor the tax is levied thereon so long as the dealer himself utilises the said credit for payment of duty as permitted. The sales tax/purchase tax becomes chargeable only on the transaction of sale of the credit of DEPB to a third party. He submits that the nature of transfer in sale of credit of DEPB is not 'money' as is being contended by the petitioners. In his submission, merely because the credit is valued and denominated in terms of money that by itself does not make it a money nor would it become 'money' only because the mechanism of debit/credit could be compared to a pass book provided by a Banking Company to its account holders. He submits that concept of money contemplated under Section 2(13) of the Bombay Sales Tax Act is entirely different than the concept of credit in the DEBP.

16. The learned counsel appearing for the Revenue urged that credit entry in DEPB is by itself a movable property. It is goods of incorporeal or intangible character. It has its own value. It can be freely bought and sold in the market. In the event of such sale or purchase, it can be subjected to tax under the Tax legislation. It is so understood in the commercial and trade parlance and, accordingly, tax is being levied on sale or purchase thereof. He submits that such a tax legislation is operating in various States and Validity thereof has been upheld. One of such judgments referred to by him was delivered by the Delhi High Court in the case of Philco Exports (supra).

17. The learned counsel for the Revenue pressed into service the monthly returns filed by the petitioners for the period 1st October, 1997 to 31st October 1997 and 1st November 1997 to 30th November 1997; wherein the petitioners have disclosed sale of credits made in the DEPB during the relevant period and paid taxes accordingly, even though the specific entry with regard to credit in the DEPB was added much later by the Ordinance dated 1st May 1998, retrospectively, from 1st April 1997. The learned counsel for the Revenue, in the premises, submitted that the petitioners rightly understood credit of DEPB and paid taxes thereon. He placed reliance on the tax returns filed by the petitioners themselves.

18. The learned counsel for the Revenue relied on judgment of the Apex Court in the case of Vikas Sales Corporation v. Commissioner of Commercial Taxes , (1996) 102 STC 106. He submits that there is no difference in nature of transaction between the sale of REP license /Exam scrip and the sale of credit of DEPB. He also placed reliance on the judgment of the Delhi High Court in the case of Philco Exports (supra) which followed the judgment of the Apex Court in the case of Vikas Sales Corporation; wherein the Delhi High Court ruled that DEPB for all practical purposes represents merchandise and is treated and dealt with as such in the commercial world. He, therefore, submitted that the credit in the DEPB is neither money nor an actionable claim. It has its own value. It is by itself a property and can be freely bought and sold in the market. The submission is that for all purposes and intents, it is 'goods'. In the end of his submission, learned counsel for the Revenue tried to defend the amendment to the Bombay Sales Tax Act and submitted that addition of entry 26(6) to Schedule C-1 of the Bombay Sales Tax act is in accordance with the provisions of the Act and it does not in any way violate any of the provisions of the Constitution of India as contended by the petitioners.

## ISSUE

19. On the basis of the foregoing submissions the crucial issue which arises for consideration in this case is: Whether the credit in the DEPB under the said Policy is beyond the purview of the definition of the 'goods' as defined under Section 2(13) of the Bombay Sales Tax Act?

## CONSIDERATION

20. Having heard the parties at length, let us turn to the contentions raised by the petitioners and refuted by the Revenue in seriatim.

21. The first contention of the petitioners is that the credits in the DEPB are made on completion of exports and debits are made on utilisation thereof for payment of duty, as such the transaction involved is nothing but 'money', therefore, not 'goods'. The transfer of credit in the DEPB is nothing but transfer of money, therefore, not within the sweep of Bombay Sales Tax Act. In order to appreciate this contention; first of all it is necessary to find out what do you mean by 'money'. The word 'money' in common parlance means a medium of exchange in the form of coins and bank notes or currency.

The money in the form of currency has well defined meaning as has been defined by Mr. Walker in 'Money, Trade and Industry' as 'That which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities; being accepted equally without reference to the character or credit of the person who offers it, and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts or payment for commodities' [see (1989) 2 Q.B. 111]. The term money means 'ready money at call'. Money cannot be considered as specific movable property, though it is a movable property. The credit of DEPB is not freely transferable to anybody bereft of the EXIM Policy. It cannot be passed on freely from one hand to another in discharge of any debt or for payment of value without reference to the character or credit of the person who offers it.

Lindley L.J. in 1891 said 'It is well at the outset to guard against confusion between meaning and the legal effect of expression used in the Statute'.

As Scott L.J. said: 'Where the words of an Act of Parliament are clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the Statute'.

The Cardinal rule of construction of Acts Parliament is that they should be construed according to the intention expressed in the Act themselves. If the words of the Statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the Lawgiver.

Lord Goddard C.J. said 'A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered' [see *Banes v. Jarvis* (1953) 1 W.L.R. 649]. Where the language of the Act is clear and explicit, we must give effect to it; whatever may be the consequences, for in that case the words of the Statute speak the intention of the legislation. Keeping these principles in mind, if one turns to preamble of the Bombay Sales Tax Act it is clear that this is an Act to consolidate and amend laws relating to levy of tax on Sale or purchase of certain goods in the State of Bombay. There cannot be sale or purchase of money for value, as such the 'money' was deliberately and consciously excluded by the legislature from the purview of the definition of 'goods' under Section 2(13) of the Bombay Sales Tax Act. As against this, credit of DEPB can be sold and purchased for money value. Sometimes, it may fetch the same or more value or even less value than the credit reflected in the DEPB depending upon the market fluctuations. As such by no stretch of imagination DEPB credit can be equated with money. It is, therefore, difficult to accept the contention advanced by the petitioners that credit entry in the DEPB would partake the nature of money.

22. The alternate submission advanced by the learned counsel for the petitioners is that credit in the DEPB is an 'actionable claim'. The 'actionable claim' is defined in Section 3 of the Transfer of Property Act, 1882, which reads as under:

'Actionable claim' means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge or movable property, or to any beneficial interest immovable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existence, accruing, conditional or contingent.'

The above definition comprises two types of claims, i.e. the claim to unsecured debts and claim to beneficial interest in movable property not in the possession, either actual or constructive, whether present or future,

conditional or contingent.

23. The proper reading of the aforesaid definition would indicate that the debt for which action is necessary to realise can only be said to be an actionable claim. In other words, where no action is necessary to realise the debt, it cannot be said to be actionable claim. Actionable claim under Section 130 of the Transfer of Property Act refers only to the claims capable of enforcement, at the time of assignment, by suit in the Civil Court. It does not include a claim, in respect of which cause of action had not arisen at the time of transfer, but which, in future, will mature into a claim so as to be enforce at once. In other words, a claim could not be treated as an actionable one unless, at the date of the transfer, an action could have been brought therein. A claim could have been regarded as actionable only when it was a claim in respect of a cause of action which had already matured, and which, subject to procedure, might have been enforced by suit. The Apex Court in the case of *Jugalkishore v. Raw Cotton Co.*, AIR 1955 SC 376 had occasion to consider the meaning of 'actionable claim'. In this judgment Apex Court ruled that a judgment debt or decree is not an actionable claim because no action is necessary to realise it. It has already been the subject of an action and is secured by the decree. A decree to be passed in future also does not come as such within the definition of an actionable claim. On the same analogy credit made in the DEPB is a crystallised 'debt' for realisation of which no action at law is necessary. It is a determined amount of liability accepted by the Customs. No action at law for its realisation is necessary. In case of transfer of DEPB credit, it confer upon transferee the immediate right to pay customs duty. This is not an inchoate or incomplete right. It cannot be held to materialise in future because its utilisation is dependant upon transferee importing goods covered by the DEPB Scheme. Nor can DEPB credit be held to be actionable claim because the Customs Authorities might not recognise the credit therein and the transferee would have to commence action against them in the Court of Law. In our opinion, the transfer of DEPB credit confers upon the transferee a right which is choate and perfected and exercisable immediately.

24. The Apex Court in *Delhi Cloth & Gen. Mills Co. v. Harnam Singh*, AIR 1995 SC 590 was pleased to hold that a 'debt' is property. It is a chose in action and is heritable and assignable and it is treated as property in India under the Transfer of Property Act. In the very same judgment the Apex Court ruled that it is necessary, however, to bear in mind that, under modern conditions, chose in action arising out of contract have to aspects: (i) as property and (ii) as involving a contractual obligation for performance. The property aspect is relevant for purposes of assignment, administration, taxation and the like; the contractual aspect for performance. Therefore, in our view, the credit entry in the DEPB cannot be described as an 'actionable claim'.

25. The third submission advanced by the learned counsel for the petitioners is that credit entry in the DEPB being a 'debt' cannot fall within the scope of the word 'goods'. In order to bring home the submission, the learned counsel for the petitioners placed reliance on the Black's Law Dictionary, Seventh Edition, page 410, which inter alia defines debt as under:

'debt. .... 2. The aggregate of all existing claims against a person, entity, or state ..... 3. A non monetary thing that one person owes another, such as goods or services her debt was to supply him with 20 international first-class tickets on the airline of his choice?. ....'

He also brought to our notice definition of 'debt', defined in the Law Lexicon, by P. Ramanath Aiyar, Second Edition, page 483, which reads as under:

'DEBT: A sum of money due under an express or implied agreement (as) a bond or bill or note; amount due or payable from one person to another in return for money, services, goods, or other obligation. '

26. The learned counsel for the petitioners also placed reliance on the judgment of the Apex Court in *Keshoram* (supra); wherein the Apex Court while interpreting the word 'debt' in a case related wealth tax had held as under:

'A debt is a present obligation to pay an ascertainable sum of money, where the amount is payable in prasenti, solvendum in futuro; debitum in praesenti. Solvendum in futuro.'

In the submission of the learned counsel for the petitioners, the amount of credit in the DEPB is an ascertained sum, which the Government is bound to liquidate against payment of customs duty payable on the future imports by the DEPB holder or his transferee. It is not contingent upon happening of any event. Once the holder discharges his export obligation, he is entitled to the credit which can be liquidated in the manner set out above. He also placed reliance on the judgment of the Apex Court in the case of Raymond Synthetics Ltd. (supra) and tried to contend that credit in the DEPB is essentially, a debt owed by the Government to the holder of the DEPB or his transferee. In his submission, the Government is bound to liquidate the credit in the DEPB and set it off against the import duty liability of the holder of the DEPB or his transferee, as the case may be. We fail to understand as to how the aforesaid argument would advance the case of the petitioners. As a matter of fact, the judgment sought to be relied upon by the petitioners, even if accepted to be applicable to the facts of the present case and credit entries are held to be 'debt', even then it being an ascertained and crystallised debt it would be a property as held by the Apex Court in the case of Delhi Cloth & Gen. Mills Ltd. (cited supra). If debt is found to be recoverable by action then only it will partake the nature of 'actionable claim'. But if it is a crystallised debt warranting no action for realisation thereof then in that event, even though it may be a debt but such a 'debt' would be a property. Such property aspect of the debt is available for purposes of assignment, administration, taxation and the like: as held by the Apex Court in the case of Delhi Cloth and Gen. Mills Co. Ltd. (supra). A debt is also treated as sum of money payable for the existing obligation. Therefore, in our opinion, the credit entry even if held to be a 'debt' for which no action is necessary, consequently, it would be a property available for taxation on its sale and purchase under the Bombay Sales Tax Act.

27. The learned counsel for the petitioners tried to distinguish the judgment of the Delhi High Court in the case of Philco Exports (supra) and submitted that this judgment does not lay down the correct legal position. He, however, pointed out that the Delhi High Court while holding that the sales tax is payable on transfer of credit in DEPB under the Delhi Sales Tax Act, has heavily relied on the judgment of the Apex Court in the case of Vikas Sales Corpn. (supra). The said judgment, according to the petitioners, was on the point of applicability of sales tax on transfer of REP licence under the EXIM Policy. The Apex Court held that REP licence is goods and is liable to sales tax. In the submission of the learned counsel for the petitioners, reliance on the judgment of the Vikas Sales Corpn. (supra) by the Delhi High Court was erroneous. In his submission, REP licence cannot be equated with the transfer of credit in the DEPB. REP licence is merely a licence which grants a right to import goods, which right is transferable. Whereas, credit in the DEPB is not a licence, which merely gives right to import goods. It is an amount available to the credit of the holder to be liquidated against the payment of import duty for future imports. Therefore, in his submission, reliance placed on the judgment in the case of Vikas Sales Corpn. (supra) while deciding that the credit in the DEPB is goods is not correct in law. He further submitted that the Delhi High Court while deciding the case in Philco Exports (supra) and holding that credit in the DEPB is not actionable claim only relied upon Vikas Sales Corpn. (supra) and the Apex Court in the case of Vikas Sales Corpn. (supra), in turn, relied upon its earlier judgment in the case of N. Anraj v. Government of Tamil Nadu, : AIR1986SC63 holding that REP licence is not an actionable claim. He relied upon the said judgment and pressed into service para-23 of the said judgment, which reads as under:

'Since 'goods' are defined to exclude actionable claims it will be useful at this stage to refer to the definition of 'actionable claim' as given in Section 3 of the Transfer of Property Act which run thus:

'Actionable claim' means a claim to any debt, other than debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existence, accruing, conditional or contingent.'

The definition as analysed in Mulla's Transfer of Property Act (at page 805 of the 6th Edition) comprises two types of claim (a) a claim to unsecured debts and (b) a claim to beneficial interest in movable property not in possession, actual or constructive - whether present or future, conditional or contingent. We would be concerned not with (a) but with (b) in this case, and reading (b) it is clear that if the beneficial interest in

movable property is not in possession of the claimant it will be an actionable claim but if it is in his possession or enjoyment it will not be actionable claim but a chose in possession. Keeping the aforesaid aspects in view we proceed to consider the questions whether lottery tickets are goods properly so called or whether these are actionable claims.'

28. In the submission of the learned counsel for the petitioners, in view of above the Apex Court did not examine the first part of the definition of the 'actionable claim', namely, claim to unsecured debts in the case of H. Anraj (supra) which is solely relied upon by the Apex Court in the case of Vikas Sales Corpn. (supra) while holding that REP licence is not an actionable claim. He, therefore, submitted that the Delhi High Court has not considered the first part of the definition of the actionable claim, namely, claim to unsecured debts, while holding that credit in the DEPB is not an actionable claim. Hence, he submitted that the judgment in the case of Philco Exports (supra) does not lay down correct legal position and needs reconsideration at the hands of this Court. We have given our anxious consideration to the submissions advanced and are of the confirmed opinion that the contention advanced by the learned counsel for the petitioners cannot be accepted.

29. The Delhi High Court rightly relied upon the case of Vikas Sales Corporation (supra) and rightly held that DEPB credit is not an actionable claim. We concur with the view taken by the Delhi High Court and hold that the DEPB credit is liable for sales tax under the Bombay Sales Tax Act. None of the above contentions canvassed by the petitioners hold water. No other contentions were raised.

In the result, petition is dismissed. Rule stands discharged with no order as to costs.

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