

राजस्थान कर बोर्ड, अजमेर

अपील संख्या - 114/2014/हनुमानगढ़.

मैसर्स जयश्री बालाजी ट्रेडर्स, आर.एच.बी. कॉलोनी, हनुमानगढ़. ....अपीलार्थी.  
बनाम

सहायक वाणिज्यिक कर अधिकारी, घट-1, वृत्त-बी, हनुमानगढ़. ....प्रत्यर्थी.

एकलपीठ

श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री वी. सी. सोगानी, अभिभाषक .....अपीलार्थी की ओर से.

श्री आर. के. अजमेरा,

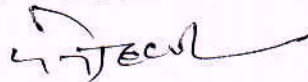
उप-राजकीय अभिभाषक .....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 05/08/2015

निर्णय

1. यह अपील अपीलार्थी व्यवहारी द्वारा उपायुक्त (अपील्स), वाणिज्यिक कर बीकानेर (जिसे आगे 'अपीलीय अधिकारी' कहा गया है) के अपील संख्या 349/आरवैट/श्रीगंगानगर/12-13 में पारित किये गये आदेश दिनांक 11.10.2013 के विरुद्ध राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 (जिसे आगे 'वेट अधिनियम' कहा जायेगा) की धारा 83 के अन्तर्गत प्रस्तुत की गयी है। अपीलीय अधिकारी ने उक्त आदेश से सहायक वाणिज्यिक कर अधिकारी, घट-प्रथम, वृत्त-बी, हनुमानगढ़ (जिसे आगे 'कर निर्धारण अधिकारी' कहा जायेगा) द्वारा अपीलार्थी व्यवहारी की आलौच्य अवधि वर्ष 2007-08 के लिये वेट अधिनियम की धारा 23/24 के तहत पारित किये गये कर निर्धारण आदेश दिनांक 11.03.2010 सपठित आदेश दिनांक 08.06.2010 अन्तर्गत वेट अधिनियम की धारा 26 के विरुद्ध प्रस्तुत अपील को अस्वीकार किया है।

2. प्रकरण के तथ्य संक्षेप में इस प्रकार हैं कि कर निर्धारण वर्ष 2007-08 का नियमित कर निर्धारण आदेश सम्पूरित किया जा चुका था। लेखा-पुस्तकें स्वीकार की गई थी तथा दावाकृत (Claimed) आई.टी.सी. को स्वीकार कर दिया गया था। इसके पश्चात कर निर्धारण अधिकारी द्वारा यह पाये जाने पर कि स्वीकार की गई आई.टी.सी. का सत्यापन उन लोगों से जिन्होंने माल बेचा है, से नहीं होने के कारण धारा 26 में कारण बताओ नोटिस जारी किया गया। कर निर्धारण अधिकारी द्वारा दिये गये सुनवाई के दौरान बीमारी के कारण के आधार पर सुनवाई स्थगन की प्रार्थना की गई थी, परन्तु उसे अस्वीकार कर कर निर्धारण अधिकारी ने एकपक्षीय कर निर्धारण आदेश पारित कर दिया। आई.टी.सी. सत्यापित नहीं होने के कारण कुल रूपये 8,36,033/- की मांग सृजित कर दी गई। अपीलीय अधिकारी द्वारा अपील अस्वीकार किये जाने के कारण यह अपील प्रस्तुत की गयी है।



लगातार.....2

3. अपीलार्थी के विद्वान अभिभाषक ने कथन किया कि कर निर्धारण अधिकारी द्वारा वेट अधिनियम की धारा 26 में कर निर्धारण सम्पूरित करके गलती की है। धारा 26 लागू/अवलम्ब लेना invoke करना त्रुटिपूर्ण है। कर निर्धारण सम्पूरित करते समय दावा की गई आई.टी.सी. की जांच की गई व जांच पश्चात स्वीकार की गई थी। अब उन विक्रेता व्यवहारियों से आई.टी.सी. सत्यापित नहीं होने के कारण अपीलार्थी से मांग वसूल करना विधिसम्मत नहीं होने का कथन किया।

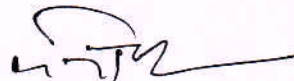
4. अपीलार्थी ने जिन विक्रेता व्यवहारियों से माल खरीदा है, वे विक्रेता व्यवहारी पंजीकृत थे तथा उचित टिन नम्बर धारक थे। यदि विक्रेता व्यवहारी ने उनके द्वारा संग्रहित कर जमा नहीं कराया है तो यह जमा कराने में वे असफल रहे हैं, यह उनकी जिम्मेदारी है। अपीलार्थी क्रेता व्यवहारी से यह वसूल किये जाने योग्य नहीं है।

5. अपीलीय अधिकारी के समक्ष जो अपील आधार लिये हैं, वे अपील आधार इस स्तर पर भी लिये जा रहे हैं। अपीलीय अधिकारी के समक्ष निम्न आधार लिये गये थे :-

- (1) (1998) 109 एस.टी.सी. 439 स्टेट ऑफ महाराष्ट्र बनाम मैसर्स सुरेश ट्रेडिंग कम्पनी
- (2) माननीय उच्चतम न्यायालय की सिविल अपील संख्या 3596/2005 निर्णय दिनांक 17.01.2007 मैसर्स सुचित्रा कम्पोनेन्ट लिमिटेड बनाम कमिश्नर केन्द्रीय उत्पाद
- (3) माननीय दिल्ली उच्च न्यायालय का न्यायिक दृष्टान्त 2013 वी.एस. टी. 25 शान्ति किरण इंडिया (प्रा0) लिमिटेड बनाम कमिश्नर ऑफ ट्रेड टैक्स
- (4) माननीय पंजाब एण्ड हरियाणा उच्च न्यायालय का न्यायिक दृष्टान्त 2011 वी.एस.टी. बी-765 मैसर्स घेरूलाल बालचन्द बनाम स्टेट ऑफ हरियाणा

6. कर निर्धारण अधिकारी द्वारा अपीलार्थी व्यवहारी को समुचित अवसर भी प्रदान नहीं किया गया है। विक्रेता के कार्यालय की पत्रावली को आधार माना है, ना कि समुचित जांच करवाई गई है।

7. प्रत्यर्थी राजस्व की ओर से विद्वान उप-राजकीय अभिभाषक ने अपीलीय आदेश व कर निर्धारण आदेश का समर्थन करते हुए अपीलार्थी की अपील अस्वीकार किये जाने पर बल दिया।



8. उभयपक्ष की बहस पर मनन किया गया एवं पत्रावली का अवलोकन किया गया।
9. वर्ष 2007-08 का कर निर्धारण आदेश वेट अधिनियम की धारा 23 में दिनांक 11.03.2010 को पारित किया गया था। निम्न विधिक प्रावधानों का अवलोकन समीचीन है :-
10. वेट अधिनियम की धारा 23 निम्न प्रकार है :-

**23. Self Assessment.-**

- (1) Every registered dealer who has filed all the returns for the year within the prescribed time shall, subject to the provisions of section 24, be deemed to have been assessed for that year on the basis of such returns filed under section 21.
- (2) Notwithstanding anything contained in sub-section(1), a dealer may opt for quarterly assessment by informing his assessing authority or the officer authorized by the Commissioner in writing, his intention to do so, within thirty days of the commencement of the year for which such option is being exercised. The dealer who has exercised such option and filed return within the prescribed time, shall, subject to the provisions of section 24, be deemed to have been assessed on the basis of return filed under section 21 for the quarter to which it relates. However, for the year 2006-2007 to 2008-2009 such option can be exercised within thirty days from the date of commencement of the Rajasthan Value Added Tax (Amendment) Ordinance, 2008 (Ordinance No.6 of 2008) in the prescribed manner.
- (3) The list of the registered dealers assessed under sub-section (1) or (2) may be published through electronic or print media and such publication shall be deemed to be due intimation to such dealers wherever required.
11. वेट अधिनियम की धारा 21 निम्न प्रकार है :-

**21. Filing of return.-**

- (1) Every registered dealer shall assess his liability under this Act, and furnish return, for such period, in such form and manner and within such time as may be prescribed, to the assessing authority or to the officer authorized by the Commissioner.



- (2) Any person or a dealer as may be required by a notice to do so by the Assessing authority or by an officer authorized by the Commissioner in this behalf, shall furnish return for such period in such form and manner and within such time as may be specified.
- (3) Notwithstanding any thing contained in sub-section (1), where the Commissioner is of the opinion that it is expedient in the public interest so to do may by a notification in the Official Gazette extend the date of submission of the returns or may dispense with the requirement of filing any or all the returns by a dealer or class of dealers.

12. वेट अधिनियम की धारा 2(3) निम्न प्रकार है :-

**2. Definitions. –**

- (3) “assessment” means determination of liability under this Act;

13. वेट अधिनियम की धारा 18 निम्न प्रकार है :-

**18. Input Tax Credit. –**

- (1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of section 3 or section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of –
- (a) sale within the State of Rajasthan; or
- (b) sale in the course of inter-State trade and commerce; or
- (c) sale in the course of export outside the territory of India; or
- (d) being used as packing material of the goods, other than exempted goods, for sale; or
- (e) being used as raw material, except those as may be notified by the State Government, in the manufacture of goods other than exempted goods, for sale within the State or in the course of inter-State trade or commerce; or
- (f) being used as packing material of goods or as raw material in manufacture of goods for sale in the course of export outside the territory of India; or
- (g) being used in the State as capital goods; however, if the goods purchased are used partly for the purposes specified in this sub-section and partly as otherwise, input tax credit shall be allowed proportionate to the extent they are used for the purposes specified in this sub-section.



- (2) The claim of input tax credit shall be allowed on the tax deposited on the basis of original VAT invoice within three months from the date of issuance of such invoice. However, claim of input tax credit of the additional tax deposited may be allowed on the basis of VAT invoice which has been issued subsequently in compliance with the decision of any competent court or authority, showing the tax at higher rate. If the first original VAT invoice is lost, input tax credit may be allowed on the basis of a duplicate copy thereof, subject to such conditions as may be prescribed.
- (3) Notwithstanding anything contained in this Act, no input tax credit shall be allowed on the purchases—
- (i) from a registered dealer who is liable to pay tax under sub-section (2) of section 3 or who has opted to pay tax under section 5 of this Act; or
  - (ii) of goods made in the course of import from outside the State; or
  - (iii) where the original VAT invoice or duplicate copy thereof is not available with the claimant, or there is evidence that the same has not been issued by the selling registered dealer from whom the goods are purported to have been purchased; or
  - (iv) of goods where invoice does not show the amount of tax separately; or
  - (v) where the purchasing dealer fails to prove the genuineness of the purchase transaction, on being asked to do so by an officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner.
- (4) The State Government may notify cases in which partial input tax credit may be allowed subject to such conditions, as may be notified by it.

14. वेट अधिनियम की धारा 10 निम्न प्रकार है :-

**10. Burden of proof. -**

**The burden of proving that any sale or purchase effected by any person is not liable to tax for any reason under this Act or to prove for entitlement of input tax credit on any purchases, shall be on such person.**

15. माननीय उड़ीसा उच्च न्यायालय के न्यायिक दृष्टान्त (1965) 16 एस.टी. सी. 271 (उड़ीसा) नौरंगलाल अग्रवाल बनाम स्टेट ऑफ उड़ीसा में निम्न व्यवस्था दी गयी है :-



लगातार.....6

"If an assessee wants to claim a deduction under section 5(2)(a)(A)(ii) of the Orissa Sales Tax Act, 1947, the burden of proving the deduction initially lies on him and he can be said to have discharged that burden by showing that he sold the goods to a person holding a certificate of registration issued by the department. The law does not cast on the assessee any responsibility to be satisfied about the correctness of the certificate of registration, because it would prima facie be a strong piece of evidence in his favour. But if he does not make any further enquiries and remains content with the mere production of the certificate, he runs the risk of losing his claim for deduction if the department succeeds in showing that the purchasing dealer was not, in law, a registered dealer. It would be open to the department to lead evidence to show that the holder of the certificate of registration was not registered under the provisions of the Act and was not a registered dealer in the eye of law. The declaration which states that the purchasing dealer is a registered dealer may be correct so far as the statement of fact is concerned, but it may not be correct so far as the question of law as to whether the purchasing dealer was validly registered is concerned. Hence the mere production of a declaration though a strong presumptive evidence in support of the claim for deduction, will not be conclusive and it will be open to the department to rebut that presumption.

The Sales Tax Authorities have no jurisdiction to grant certificates of registration to fictitious or persons who do not "carry on" business. Any such mistake committed by the officers of the department either due to negligence or due to collusion cannot, on general principles, operate as estoppel against the State.

A Rule of estoppel may arise on a statement of fact on the basis of which a person took some action or omitted to take action and therefore the State may not be permitted to say that the purchasing dealer in fact did not get himself registered. But the question as to whether such registration is valid or not is a pure question of law and the rule of estoppel will not apply."

16. न्यायिक दृष्टान्त (2014) 40 टैक्स अपडेट 124 राज मोटर्स मशीनरी स्टोर्स अलवर बनाम वाणिज्यिक कर अधिकारी, वृत्त-बी, अलवर में माननीय राजस्थान कर बोर्ड द्वारा निम्न सिद्धान्त प्रतिपादित किया गया है -

लगातार.....7



"Sec. 18 of the Rajasthan Value Added Tax Act, 2003 - Input Tax Credit- Appellant dealer claimed input tax credit on goods purchased from M/s Deepak Machinery Traders, Alwar while the settle firm filed VAT-08 showing nil sale. Assessing authority rejected the claim of ITC on the ground that seller has not deposited the tax within 3 months from the date of invoice therefore, reversed the ITC & imposed interest & penalty u/s 61(2)(b) of the Act. Appellate authority reversed the penalty but maintained the reversal of ITC & interest. Rajasthan Tax Board while dismissing the appeal of the dealer held that :- As per provisions of sec. 18(2) of the Act ITC is allowed only when the seller dealer deposits the tax shown in invoice within three months from the date of invoice. In this case the seller has shown nil sale in his VAT-08 submitted with the department, therefore, question of payment of tax does not arise. In these circumstances order of appellate authority needs no interference."

17. न्यायिक दृष्टान्त (2014) 39 टैक्स अपडेट 45 सहायक आयुक्त, वृत्त-ई, जोधपुर बनाम मैसर्स आर. के. इण्डस्ट्रीज, जोधपुर में निम्न मत प्रतिपादित किया गया है :-

"Sec. 18 of the Rajasthan Value Added Tax Act, 2003 - Input Tax Credit - Assessing authority reversed the input tax credit claimed by the dealer on the ground that registration of seller dealer was cancelled. Assessing authority was of the view that input tax credit could be allowed only when the tax deposited by the seller is verified. Respondent dealer argued that the transaction of purchase was genuine and the registration certificate was cancelled with retrospective effect which cannot be known by any purchasing dealer. Rajasthan Tax Board while remanding the case held that :- Assessing authority has reversed the input tax credit on the ground of cancellation of registration of selling dealer. As per section 18(3)(v) input tax credit can be disallowed only when the purchase transaction is not genuine. It is clear in this case that purchase was made from registered dealer but any proof of genuineness of transaction was not produced before the assessing authority. Therefore, respondent dealer is instructed to submit the documents e.g. invoice, bilty and slip of mandi samity before the assessing authority for verification and the assessing authority is instructed to allow the claim of input tax credit after verification of the transaction as genuine."

18. न्यायिक दृष्टान्त (2015) 41 टैक्स अपडेट 269 (राज.) पूजा ट्रेडिंग कम्पनी बनाम स्टेट ऑफ राजस्थान व अन्य में निम्न मत प्रतिपादित किया गया है :-



"Sec. 18(3)(v) of the Rajasthan Value Added Tax Act, 2003 - Input Tax Credit - As per the provisions of Section 18(3)(v), the Assessing Authority may deny the input tax credit to the assessee if the assessee fails to prove the genuineness of purchase transaction on being asked to do so, but then, before holding a purchase transaction to be non genuine, the Assessing Authority has to arrive at the finding of inadequacy, insufficiency or involvement of element of fraud/forgery in relation to the documents submitted by the assessee for claiming input tax credit. It is submitted that an assessee is not required to prove that the tax has been paid to the State at the first point of sale in series of ensuing sales. Learned counsel submitted that it is impossible for a dealer to trace the entire chain of purchase transactions and procure the proof of payment of tax by the dealer who originated the sale. According to the petitioner if the selling and purchasing dealers have collected and deposited the tax on the value of the underlying sale, any anterior or posterior link in the series would have no bearing on the transactions. It is submitted that the Assessing Authority has disallowed the input tax credit to the petitioner to the tune of Rs. 81,48,947/- by passing a non speaking order, merely on the ground that petitioner has not been able to produce the proof of payment of tax at the point of origin of sale and therefore, orders impugned deserve to be set aside. Rajasthan High Court at Jodhpur while allowing the petition of dealer held that :- "There is no finding recorded by the Assessing Authority regarding the collected tax being deposited by the selling dealer in respect of the purchase transactions entered into by the petitioner. Further, the involvement of the petitioner in alleged first sale in the series of sales, which is found to be suspicious and bogus, is presumed without there being any justifiable reason available on record. Thus, on the facts and in the circumstances of the case, in the considered opinion of this court, without considering the submissions of the petitioner and the material placed on record in their entirety and objectivity, the finding recorded by the Assessing Authority discarding the purchase transactions in question as not genuine, is not sustainable in the eyes of law."

19. न्यायिक दृष्टान्त (2014) 40 टैक्स अपडेट 173 (रा.क.बो.-खण्डपीठ) वाणिज्यिक कर अधिकारी, विशेष वृत, भरतपुर बनाम मैसर्स सुरेश ब्रदर्स, अनाज मण्डी सवाईमाधोपुर में निम्न मत प्रतिपादित किया गया है :-



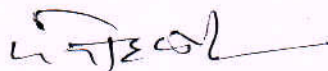
लगातार.....9



"Sec. 18 of the Rajasthan Value Added Tax Act, 2003 - Input Tax Credit - Respondent dealer claimed input tax credit on goods purchased from a dealer whose registration certificate was cancelled with retrospective effect on the ground that he issued bogus invoices for purchase and sale transactions. Respondent dealer argued that all the returns were filed by the seller and the transactions were all bonafide and it is not possible to know that the registration certificate of seller has been cancelled. Assessing authority reversed the input tax credit and also imposed penalty u/s 61(2)(a) of the Act. Rajasthan Tax Board while remanding the case held that :- Respondent dealer has argued that the tax has been deposited by the seller while his registration has been cancelled with effect from 01.04.2006 on the ground that he has issued bogus purchase & sale invoices. It is necessary to enquire how the tax deposited by the seller is adjusted u/s 20(5) of the Act. Therefore, the case is remanded to enquire the status of registration and to check the adjustment of tax deposited u/s 20(5) from the return filed by the selling dealer. In case facts of cancellation of registration are unchanged and violation of sec. 20(5) is proved the order passed by assessing authority shall be maintained."

20. न्यायिक दृष्टान्त (2013) 64 वी.एस.टी.सी. 234 पैकवेल इण्डस्ट्रीज बनाम स्टेट ऑफ कर्नाटक में निम्न व्यवस्था दी गयी है :-

"Held, dismissing the petition, that on verification of the records the authorities found that on date of the purchase made by the petitioner, the selling dealers were de-registered. The whereabouts of them were also not known. Hence, it was clear that the petitioner had made transactions with bogus and fake dealers, and availed of the input-tax rebate on the basis of the fake tax invoices. The selling dealers had not filed any declarations not remitted the tax collected from the petitioner. The petitioner had not furnished reliable and proper information about the existence of the sellers. Section 70(1) of the Act, cast burden of proof on the dealer who claimed exemption or input-tax rebate. Further it was clear from the records that the petitioner had not produced any materials to show that the dealers with whom the petitioner had made transaction had remitted the tax collected from it as required under section 70, though the petitioner had been making transaction with the dealer for more than three years. Therefore the petitioner was not entitled to claim input-tax rebate and was liable to pay the penalty and interest under section 72(2) and 36, respectively, of the Act. Thus there was no infirmity or irregularity in the order passed by the Tribunal."



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21. वेट अधिनियम की धारा 20 निम्न प्रकार है :-

**20. Payment of tax. -**

- (1) Tax payable under this Act shall be deposited into a Government treasury or a bank authorised to receive money on behalf of the State Government, on the basis of accounts of a dealer in such manner and at such intervals as may be notified by the State Government, and different intervals may be notified for different categories of dealers.
- (2) Notwithstanding anything contained in this Act, in the case of works contract, an amount in lieu of tax shall be deducted by the awardee at such rate as notified by the State Government not exceeding six percent of the total value of the contract, in such manner and under such circumstances, as may be prescribed, from every bill of payment to a contractor and such sum shall be deposited or credited in the Government account within the specified time and in the prescribed manner.
- (3) Notwithstanding anything contained in sub-section (1), where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, defer the payment of tax payable by any class of dealers, with or without interest, for any period on such conditions and under such circumstances as may be specified in the notification.
- (4) In case of any delay in payment of amount required to be deposited under any of the sub-sections (1), (2) and (3), the amount of interest under sub-section (1) of section 55 shall also be paid along with the amount of tax.
- (5) Every deposit of tax or deduction of amount in lieu of tax made under this section shall be deemed to be provisional subject to adjustment against the tax liability determined in the assessment made under this Act.
- (6) Notwithstanding anything contained in this Act, the State Government may, by notification in the Official Gazette, allow the dealer, availing the facility of deferment under sub-section (3), to make prepayment of the amount of deferred tax on such terms and conditions including the condition of remission from a part of deferred tax, as may be specified in such notification.

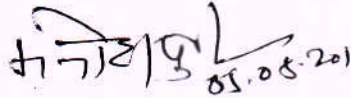


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22. उपरोक्त न्यायिक दृष्टान्तों का ससम्मान अध्ययन किया गया। प्रकरण में यह तथ्य निर्विवादित है कि अपीलार्थी को वेट अधिनियम की धारा 10 में इनपुट टैक्स क्रेडिट के हकदार होने के सम्बन्ध में सबूत प्रस्तुत करने का अवसर नहीं दिया गया है, क्योंकि एकपक्षीय कर निर्धारण आदेश पारित किया गया है। धारा 10 में अपीलार्थी पर यह भार अधिरोपित है कि वह इनपुट टैक्स क्रेडिट की हकदारी को साबित करे। माननीय राजस्थान उच्च न्यायालय द्वारा मैसर्स पूजा ट्रेडिंग कम्पनी (S.B.C.W.P. No. 9017/2013) निर्णय दिनांक 02.03.2015 के मामले में दी गई व्यवस्था की पालना में कर निर्धारण अधिकारी संव्यवहारों की प्रमाणिकता की जांच करे तथा वेट अधिनियम की धारा 18(3)(v) में इनपुट टैक्स क्रेडिट की हकदारी अस्वीकार करने से पूर्व यह लिखित में उपपत्ति (Finding) लेखबद्ध करे कि अपीलार्थी द्वारा इनपुट टैक्स क्रेडिट की हकदारी के लिये प्रस्तुत दस्तावेज/सबूत किस प्रकार अपर्याप्त हैं या उनमें किस प्रकार मिथ्या होने का तत्त्व निहित है तथा विक्रेता से अपीलार्थी द्वारा उसकी खरीद पर संग्रहित कर को जमा होने के तथ्य की पुष्टि करे।

23. परिणामस्वरूप अपीलार्थी व्यवहारी की अपील स्वीकार की जाकर, प्रकरण उपरोक्त निर्देशानुसार कर निर्धारण अधिकारी को प्रतिप्रेषित किया जाता है।

24. निर्णय सुनाया गया।

  
( मनोहर पुरी )  
सदस्य