

राजस्थान कर बोर्ड, अजमेर

अपील संख्या – 1326 / 2014 / जोधपुर.

मैसर्स रतन ट्रेडिंग कम्पनी, महामन्दिर, जोधपुर.

.....अपीलार्थी.

बनाम

सहायक आयुक्त, वृत्त-‘ए’, वाणिज्यिक कर, जोधपुर.

.....प्रत्यर्थी.

एकलपीठ

श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री एस. आर. लूंकड़,

अधिकृत प्रतिनिधि

.....अपीलार्थी की ओर से.

श्री डी. पी. ओझा,

उप-राजकीय अभिभाषक

.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 20 / 04 / 2016

निर्णय

1. यह अपील अपीलार्थी व्यवहारी ने अपीलीय प्राधिकारी, जोधपुर-प्रथम, वाणिज्यिक कर जोधपुर, (जिसे आगे ‘अपीलीय अधिकारी’ कहा जायेगा) के अपील संख्या 58/आरवैट/जेयूडी/13-14 में पारित किये गये आदेश दिनांक 28.04.2014 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 आयुक्त, वाणिज्यिक कर अधिकारी, वृत्त-ए, जोधपुर (जिसे आगे ‘कर निर्धारण अधिकारी’ कहा जायेगा) के द्वारा अपीलार्थी के कर निर्धारण वर्ष 2011-12 के लिये वेट अधिनियम की धारा 23 के तहत पारित किये गये आदेश दिनांक 12.02.2014 में आरोपित विलम्ब शुल्क रुपये 25,000/- को यथावत रखते हुये अपील अस्वीकार की है, जिसे विवादित किया गया है।

2. प्रकरण के संक्षिप्त तथ्य इस प्रकार हैं कि कर निर्धारण वर्ष 2011-12 के लिये वेट अधिनियम के अधीन पारित कर निर्धारण आदेश में वार्षिक विवरण प्रपत्र वेट 10ए प्रस्तुत नहीं करने के लिये विलम्ब शुल्क 25,000/- अभिनिर्धारित किया गया है।

3. अपीलार्थी व्यवहारी के विद्वान अधिकृत प्रतिनिधि ने बहस में कथन किया कि अपीलार्थी व्यवहारी ने कर निर्धारण वर्ष 2011-12 के लिये समस्त चारों त्रैमासिक विवरण प्रपत्र समय पर प्रस्तुत कर दिये थे। वार्षिक विवरण प्रपत्र दिनांक 05.03.2013 को विभागीय वेबसाईट पर अपलोड किया गया था, जिसको प्रस्तुत करने की अन्तिम तिथि 27.05.2013 नियत थी। यह वार्षिक विवरण प्रपत्र 10ए विहित समयावधि में प्रस्तुत किया गया था, लेकिन इसकी हार्ड कॉपी भूलवश प्रस्तुत नहीं की जा सकी। अतः आरोपित विलम्ब शुल्क अविधिक है। कर निर्धारण अधिकारी द्वारा वेट अधिनियम की धारा 64 के अधीन कोई नोटिस

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नहीं दिये जाने का कथन किया गया। विद्वान अधिकृत प्रतिनिधि ने विलम्ब शुल्क आरोपण को अपास्त करने व अपीलार्थी व्यवहारी की अपील स्वीकार करने की प्रार्थना की।

4. प्रत्यर्थी विभाग/राजस्व की ओर से विद्वान उप-राजकीय अभिभाषक ने अपीलीय आदेश का समर्थन किया तथा अपीलार्थी व्यवहारी की अपील अस्वीकार करने की प्रार्थना की गयी।

5. उभयपक्षीय बहस सुनी गयी तथा रिकार्ड का परिशीलन किया गया।

6. हस्तगत प्रकरण के निस्तारण के क्रम में वेट अधिनियम की धारा 21, 22, 23, 24, व राजस्थान मुल्य परिवर्धित नियम 2006 के नियम 19, 19ए के प्रावधानों का अध्ययन आवश्यक है जो निम्न प्रकार हैं :-

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.

22. Assessment on failure to deposit tax. -

- (1) Where a dealer has failed to deposit tax in accordance with the provisions of section 20 within the notified period, the assessing authority or the officer authorised by the Commissioner shall, without prejudice to the penal provisions in this Act, after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity of being heard, assess tax for that period to the best of his judgment.
- (2) The tax assessed under sub-section (1), after adjustment of input tax credit and the amount deposited in advance in this behalf, if any, shall be payable by the dealer within thirty days from the date of service of notice of demand. However, the assessing authority or the officer authorised by the Commissioner, after recording reasons in writing, may reduce such period.
- (3) The tax deposited under sub-section (2) shall be adjusted in the assessment for the relevant period.



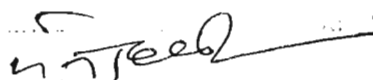
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23. Self Assessment.-

- (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.

24. Assessment.-

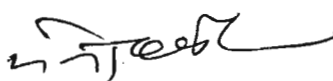
- (1) Every return furnished by a registered dealer shall be subject to such scrutiny as may be determined by the Commissioner, to verify, its correctness and if any error is detected, the assessing authority or the officer authorised by the Commissioner shall serve a notice in the prescribed form on the dealer to rectify the errors and file a revised return within such period as may be specified therein.
- (2) Where the registered dealer, who has opted for quarterly assessment, in pursuance of the notice issued under sub-section (1),-
 - (a) files revised return in terms of the notice, and deposit the tax, if any, he shall be deemed to have been assessed under sub-section (2) of section 23, as per such revised return;
 - (b) does not file revised return or the return filed by the dealer is not in terms of the notice, the assessing authority or the officer authorised by the Commissioner shall on the basis of material available on record, assess the dealer to the best of his judgment.
- (3) Where the registered dealers, who are not covered under sub-section (2), in pursuance of the notice issued under sub-section (1),-

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- (a) in case notice is issued for the quarterly return and the dealer files the revised return in terms of the notice and deposits the tax, if any, and no other error is detected in the annual return, then he would be deemed to have been assessed under sub-section (1) of section 23;
 - (b) in case notice is issued for the annual return and the dealer files the revised return in terms of the notice and deposits the tax, if any, then he shall be deemed to have been assessed under sub-section (1) of section 23, as per such revised return;
 - (c) does not file revised return or the return filed by the dealer is not in terms of the notice, the assessing authority or the officer authorised by the Commissioner would assess the dealer to the best of his judgment on the basis of material available on record.
- (4) Where the dealer does not file any or all the return(s) within the prescribed period under section 21, the assessing authority or the officer authorised by the Commissioner shall, assess the dealer on the basis of his books of accounts and if he fails to produce the same, to the best of his judgment for the year or the quarter, as the case may be.
- (5) No assessment orders under this section shall be passed after the expiry of two years from the end of the relevant year; however, the Commissioner may for reasons to be recorded in particular case may extend such time limit by a period not exceeding six months.
- (6) Notwithstanding anything contained in sub-section (5), where an assessment order is passed in consequence of or to give effect to any order of an appellate or revisional authority or a competent court, it shall be completed within two years of the communication of such order to the assessing authority; however, the Commissioner may for reasons to be recorded in writing, extend in any particular case, such time limit by a period not exceeding six months.

19. Returns.

- (1) The return referred to in sub-section (1) of section 21 of the Act, shall be submitted by a dealer, who has not opted for payment of tax under sub-section (2) of section 3 or section 5, or under a notification issued under sub-section (3) of section 8 of the Act, in Form VAT-10 for each quarter within thirty days of the end of the quarter. However, where a dealer files return electronically along with the requisite documents or submits the same in the soft copy to the Department and informs his assessing authority or the officer authorised by the Commissioner, his intention to file monthly returns, he may file monthly returns within twenty days of the end of the month.



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Explanation: Quarter means the period of three months ending on 30th June, 30th September, 31st December and 31st March and month shall mean calendar month.”

(1A) Every dealer other than those who has opted for quarterly assessment under sub-section (2) of section 23 shall file, within nine months from the end of the relevant financial year, an annual return in Form VAT-10A.

(2) The return referred to in sub-section (1) of section 21 of the Act, shall be submitted by a dealer who has opted for payment of tax under sub-section (2) of section 3 or section 5 or under a notification issued under sub-section (3) of section 8 of the Act, in Form VAT-11, for the year within ninety days of the end of the year and shall be accompanied with treasury receipt(s)/bank challan(s) of authorized bank as a proof of deposit of tax under section 20 of the Act and shall be signed and verified by the dealer himself or his business manager.

(3) The return required to be filed, under sub-rule (1), by a registered dealer shall accompany.

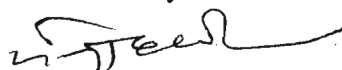
- (a) treasury receipt(s)/bank challan(s) of authorized bank as a proof of deposit of tax;
- (b) declaration forms/certificates/forms required under the rules or the notification issued by the State Government;
- (c) statement of purchases against VAT Invoices in Form VAT-07;
- (d) copy of statement of import in Form VAT-48;
- (e) statement of sales to registered dealers, other than those who exercise option under sub-section (2) of section 3, or under section 5 or sub-section (3) of section 8, in Part-I of Form VAT-08;
- (f) statement of inter-State sales in Form VAT-50;
- (g) copy of sales return register in Form VAT-12, if applicable;
- (h) proof of export as specified in rule 28, if applicable; and
- (i) account of declaration forms along with details of use, and shall be signed and verified by the dealer himself or his business manager.

If any of the above requirements except the requirement as mentioned in clause (h) are not met with, it shall be deemed to be a case of non-filing of return.

(3A) The dealer shall also submit:

- (i) the trading account and in case of manufacturer, trading and manufacturing account; and
- (ii) the profit and loss accounts,

within nine months of the close of the year



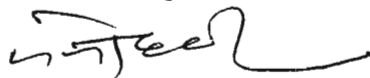
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- (4) The dealer shall file the return to his assessing authority or in the Taxpayers Service Office in whose area of operation, his principal place of business is situated, personally or through registered post.
- (5) Where a dealer has more than one place of business, he shall include in the return, the turnover of the principal place of business as well as the turnover of all other places of business and shall file such return in accordance with sub-rule (4). He shall also intimate the details of turnover of each place of business in Form VAT-13 to the Assistant Commissioner or Commercial Taxes Officer of such area(s) or the Taxpayers Service Office having jurisdiction over such branch(es). The Taxpayers Service Office or Assistant Commissioner or Commercial Taxes Officer shall, after taking necessary action, forward such return to the assessing authority or to the authorized officer having jurisdiction over principle place of business.
- (6) Where a dealer discovers any omission or error in any return, other than annual return furnished by him, he may furnish revised return at any time prior to the due date of filing immediately succeeding return or receipt of the notice under sub-section (1) of section 24, whichever is earlier. However, where a dealer has not opted for quarterly assessment under sub-section (2) of section 23; he may furnish such revised return prior to the furnishing of the annual return in Form VAT-10A or receipt of the notice under sub-section (1) of section 24, whichever is earlier.
- (7) Notwithstanding anything contained in this rule, any dealer or class of dealers as may be specified by the Commissioner, shall file the return referred to in sub-section (1) of section 21 of the Act, electronically in the manner as provided in rule 19A of the said rules.

19A. Late Fee - where a dealer furnishes the return after the prescribed time, he shall pay a late fee of :

- (i) rupees one hundred subject to a maximum of rupees fifty thousand in case the dealer is required to pay tax every month or part thereof under section 20 of the Act; and
- (ii) rupees fifty per day subject to a maximum of rupees five thousand, in all other cases.

7. पत्रावली के अवलोकन से प्रकट होता है की अपीलार्थी व्यवहारी ने वार्षिक विवरण प्रपत्र वेट-10ए दिनांक 05.03.2013 को जरिये पावती संख्या 99904182308 को विभागीय वेबसाईड पर अपलोड किया परन्तु हस्ताक्षर युक्त पावती की हार्ड कॉपी कार्यालय में प्रस्तुत नहीं की जा सकी। अपीलीय



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प्राधिकारी ने अपने आदेश के पृष्ठ संख्या 3 के पैरा संख्या 6 में उल्लेख किया है कि विभागीय वेबसाईड पर वार्षिक विवरण पत्र दिनांक 05.03.2013 को अपलोड हुआ है एवं विवरण पत्र की पावती की हस्ताक्षरयुक्त हार्डकोपी पेश नहीं की गयी है।

8. नियम 19(2) के प्रावधान दिनांक 14.07.2014 से पूर्व निम्न प्रकार थे -

(2) Every dealer shall submit return electronically through the official web-site of the department, unless otherwise notified by the Commissioner. The return shall be digitally signed by the dealer or his business manager and in case it is not digitally signed, the dealer shall furnish, the acknowledgement generated through official Web-Site of the Department and shall be verified by himself or his business manager by affixing his signature on it, within fifteen days of the last date for filing of such return(s) and in case the return(s) is filed after the last date of filing of return(s), within fifteen days of the filing of such late return(s), failure to do so shall be deemed to be a case of non filing of return(s).

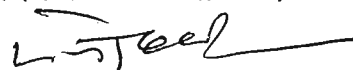
9. नियम 19(2) के प्रावधान दिनांक 14.07.2014 से प्रभावी निम्न प्रकार हैं -

(2) Every dealer shall submit return electronically through the official website of the department, unless otherwise notified by the Commissioner. The return shall be digitally signed by the dealer or his business manager.

However, where the dealer has given his consent to use the official website for submitting return in the prescribed manner, he may submit return without digital signature.

However, for the period prior to 01.04.2014, if the dealer has failed to furnish the signed copy of acknowledgement generated through the official website of the department, within the time prescribed under the rules which were in force at that time, the date of submission of signed copy of said acknowledgement shall be deemed to be the date of the filing of the return.

10. नियम 19(2) जो दिनांक 14.07.2014 से प्रभावी हैं, में यह प्रावधान किया गया है कि दिनांक 01.04.2014 से पूर्व की समयावधि के लिये विभाग की ऑफिशियल वेबसाईड के द्वारा जेनरेटेड हस्ताक्षरयुक्त पावती विहित समयावधि (जो तत्समय में प्रचलित थी) में प्रस्तुत करने में असफल रहने की स्थिति में पावती की हस्ताक्षरयुक्त कॉपी प्रस्तुत करने की दिनांक वह मानी जायेगी जो विवरण प्रपत्र प्रस्तुत करने की दिनांक थी। इस संशोधन के पश्चात यह स्पष्ट है कि दिनांक 01.04.2014 से पूर्व की समयावधि के लिये यदि देय विवरण प्रपत्र विहित समयावधि में प्रस्तुत किया गया है तो पावती की हस्ताक्षरयुक्त कॉपी प्रस्तुत करने की दिनांक भी वही दिनांक मानी जायेगी।


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11. अपीलीय अधिकारी की पत्रावली व कर निर्धारण अधिकारी की पत्रावली में वार्षिक विवरण पत्र-10ए दिनांक 05.03.2013 को प्रस्तुत करने के बारे में कोई प्रमाण उपलब्ध नहीं है। यद्यपि अपीलीय प्राधिकारी ने अपने आदेश में वार्षिक विवरण पत्र 10ए दिनांक 05.03.2013 को अपलोड करने का उल्लेख किया है।

12. उपरोक्त तथ्यात्मक व विधिक विवेचना के पश्चात यह निष्कर्षित किया जाता है कि यदि अपीलार्थी व्यवहारी द्वारा वार्षिक विवरण पत्र 10ए दिनांक 05.03.2013 को प्रस्तुत किया जाने का समाधान कर निर्धारण अधिकारी को हो जाने/अपीलार्थी द्वारा कराये जाने की स्थिति में नियम 19(2) जो दिनांक 14.07.2014 से प्रभावी है, के प्रकाश में कोई विलम्ब शुल्क आरोपणीय नहीं होगा क्योंकि हार्ड कॉपी प्रस्तुत करने की दिनांक भी 05.03.2013 मान लिये जाने का प्रावधान किया गया है। उल्लेखनीय है कि कर निर्धारण वर्ष 2011-12 के लिये वार्षिक विवरण प्रपत्र वैट-10ए प्रस्तुत करने की अन्तिम तिथि आयुक्त, वाणिज्यिक कर राजस्थान, जयपुर के आदेश क्रमांक एफ.16(375)/टैक्स/वैट/सीसीटी/2006 पार्ट-I/232 दिनांक 15.05.2013 के द्वारा दिनांक 27.05.2013 तक बढ़ाई गई थी।

13. परिणामस्वरूप अपीलार्थी व्यवहारी की अपील स्वीकार करते हुए, प्रकरण कर निर्धारण अधिकारी को प्रतिप्रेषित करते हुए निर्देश दिये जाते हैं कि वह नियम 19(2) के दिनांक 14.07.2014 के संशोधन पश्चात की स्थिति के परिप्रेक्ष्य में तथ्यों का सत्यापन करते हुए विलम्ब शुल्क आरोपणीय होने अथवा नहीं होने के कारण लिखित में लेखबद्ध करते हुए पुनः विधिसम्मत आदेश पारित करें। अपीलार्थी को भी निर्देशित किया जाता है कि वह वांछित साक्ष्य/दस्तावेज सहित दिनांक 13.06.2016 को कर निर्धारण अधिकारी के समक्ष उपस्थित हों।

14. निर्णय सुनाया गया।


(मनोहर पुरी)
सदस्य