

राजस्थान कर बोर्ड, अजमेर

1. अपील संख्या – 1755 / 2012 / जोधपुर.
2. अपील संख्या – 1756 / 2012 / जोधपुर.
3. अपील संख्या – 1757 / 2012 / जोधपुर.

मैसर्स सोमी कन्वेयर बेल्टिंग लिमिटेड,
4-F-15, ओलिवर हाउस, न्यू पॉवर हाऊस, जोधपुर.

.....अपीलार्थी.

बनाम

सहायक आयुक्त, विशेष वृत्त-द्वितीय, जोधपुर

.....प्रत्यर्थी.

खण्डपीठ

श्री मदन लाल, सदस्य

श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री जी.एल.चितलांगिया, अभिभाषक

.....अपीलार्थी की ओर से.

श्री डी. पी. ओझा,

उप-राजकीय अभिभाषक

.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 09 / 09 / 2016

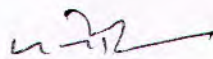
निर्णय

1. यह तीनों अपीलें अपीलार्थी व्यवहारी ने उपायुक्त (अपील्स) प्रथम, वाणिज्यिक कर, जोधपुर (जिसे आगे 'अपीलीय अधिकारी' कहा जायेगा) द्वारा निम्न तालिका में अंकित विवरण अनुसार अपीलीय अधिकारी के संयुक्तादेश दिनांक 31.05.2012 के विरुद्ध प्रस्तुत की गई है -

क्र. सं.	अपी.अधि.की अपील संख्या	कर निर्धारण वर्ष एवं दिनांक	कर बोर्ड की अपील संख्या	कर	ब्याज	योग
1.	24 / आरवैट	2007-08 / 26.03.2010	1755 / 2012	12,56,183	-	12,56,183
2.	8 / आरवैट	2008-09 / 10.02.2011	1756 / 2012	4,93,893	-	4,93,893
3.	7 / सीएसटी	2008-09 / 10.02.2011	1757 / 2012	2,64,902	60,927	3,25,829

अपीलीय अधिकारी ने उक्त आदेश के द्वारा सहायक आयुक्त, वाणिज्यिक कर, विशेष वृत्त-द्वितीय, जोधपुर (जिसे आगे 'कर निर्धारण अधिकारी' कहा जायेगा) के द्वारा राजस्थान मूल्य परिवर्धित कर अधिनियम 2003 (जिसे आगे 'अधिनियम' कहा जायेगा) एवं केन्द्रीय विक्रय कर अधिनियम, 1956 (जिसे आगे 'केन्द्रीय अधिनियम' कहा जायेगा) की धारा 9 के अन्तर्गत पारित आदेश में कायम की गई मांग राशि के आरोपण को यथावत रखते हुए अपीलें अस्वीकार की गई हैं। अपीलीय अधिकारी के आदेश को विवादित करते हुए ये अपीलें प्रस्तुत की गयी हैं।

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2. उक्त तीनों अपीलों में पक्षकार एवं विवादित बिन्दु समान निहित होने के कारण इनका निस्तारण संयुक्त आदेश से किया जा रहा है। आदेश की प्रति प्रत्येक पत्रावली पर पृथक-पृथक रखी जा रही है।

3. प्रकरण के संक्षेप में तथ्य निम्न प्रकार है कि अपीलार्थी द्वारा Capital Goods पर I.T.C. का क्लेम समयावधि में नहीं किए जाने तथा कर निर्धारण अधिकारी द्वारा इस संबंध में नोटिस जारी किए जाने पर क्लेम पेश करने पर I.T.C. की Credit को अमान्य करते हुए कर निर्धारण आदेश पारित किया गया है। साथ ही वर्ष 2008-09 में अपीलार्थी द्वारा एक ट्रक खरीदे जाने पर Capital Goods के रूप में I.T.C. का क्लेम किया गया है, उसको भी अमान्य किया गया है।

4. अपीलार्थी के विद्वान अभिभाषक ने बहस में कथन किया कि अपीलार्थी द्वारा जो Capital Goods वर्ष 2007-08 एवं 2008-09 में क्रय की गयी है, वह विधिसम्मत क्रय होने के कारण 'अधिनियम' की धारा 18(1) के तहत Capital Goods के रूप में आगत कर (I.T.C.) की क्रेडिट पाने योग्य थे परन्तु कर निर्धारण अधिकारी द्वारा अनुचित रूप से I.T.C. को अमान्य किया गया है। उन्होंने कथन किया कि अपीलार्थी ने उत्पादन कार्य में विस्तार करते हुए एक नई ईकाई स्थापित की थी, जिसके लिए विभिन्न मशीनरी के क्रय को अपने त्रैमासिक रिटर्न में नहीं दर्शाया था एवं I.T.C. का क्लेम भी तदनुसार विवरण पत्रों में नहीं किया गया था। उन्होंने कथन किया कि विस्तार करने के मामलों में निर्माण कार्य आरंभ होने के बाद प्रथम बिक्री होने के पश्चात आगामी सितम्बर अथवा मार्च में ही I.T.C. का क्लेम किया जा सकता था। अपीलार्थी के विद्वान अभिभाषक ने कथन किया कि अपीलार्थी द्वारा मशीनरी पर देय I.T.C. का न तो समायोजन लिया गया है एवं न ही विवरण पत्रों में दर्शाया गया है क्योंकि उनका यह मानना था कि विस्तार योजना में विस्तारित उत्पादन के पश्चात ही I.T.C. का उपयोग किया जा सकता है।

4(a). विद्वान अभिभाषक ने कथन किया कि कर निर्धारण अधिकारी द्वारा क्लेम किये गये I.T.C. में अन्तर दृष्टिगत होने पर यह पूछा गया कि I.T.C. में अन्तर क्यों है ? तब अपीलार्थी द्वारा दिनांक 15.03.2010 को संशोधित विवरण पत्र प्रस्तुत कर दिये थे। अग्रिम कथन किया कि कर निर्धारण अधिकारी द्वारा जो संशोधित विवरण पत्र (Revised Return) पेश किया गया था उसी को स्वीकार करते हुए कर निर्धारण आदेश पारित किया गया है परन्तु संशोधित विवरण पत्र में जो I.T.C. बतायी गयी थी उसे स्वीकार नहीं किया गया है जो विधिसम्मत

नहीं है। अपने कथन के समर्थन में राजस्थान कर बोर्ड की अपील संख्या 1012/2011/जयपुर में माननीय खण्डपीठ का निर्णय दिनांक 10.05.2012 की प्रति प्रस्तुत की।

4(b). विद्वान अभिभाषक ने अग्रिम कथन किया कि उनके द्वारा संशोधित विवरण पत्र के साथ में वैट-07 पूरे वर्ष के लिए प्रस्तुत कर दिया गया था तथा ऑडिट रिपोर्ट में I.T.C. Claim pending होने सम्बन्धी नोट ऑडिटर द्वारा दर्शाया गया था। उन्होंने कथन किया कि अधिनियम में कई तरह के संशोधन होने से संशयात्मक स्थिति में I.T.C. क्लेम को विस्तारित ईकाई के उत्पादन के बाद ही दिए जाने की मान्यता के तहत I.T.C. को नियमित विवरण पत्र में नहीं दर्शाया गया था। उनके द्वारा नियम 19(6) के अनुसार निर्धारण प्राधिकारी द्वारा नोटिस जारी होने के पश्चात संशोधित रिटर्न प्रस्तुत कर दिया गया था, ऐसी स्थिति में उनके Revised Return के अनुसार I.T.C. नहीं दिया जाना अविधिक है। यह भी कथन किया कि कर निर्धारण अधिकारी द्वारा अपने आदेश में Capital Goods में I.T.C. को अस्वीकृत करने का कोई कारण नहीं दिया गया है। विद्वान अभिभाषक ने बहस में कथन किया कि वैट अधिनियम एवं नियमों में अनेक संशोधन होने के कारण संशय होने की स्थिति के कारण Capital Goods में I.T.C. का क्लेम भूलवश नहीं किया जा सका। अन्त में अपीलीय अधिकारी के आदेश को अपास्त करने की मांग करते हुए अपीलें स्वीकार करने की प्रार्थना की गई।

5. विद्वान उप-राजकीय अभिभाषक ने अपीलीय अधिकारी के आदेश का समर्थन किया तथा अपीलार्थी की अपीलें अस्वीकार करने की प्रार्थना की गई।

6. उभयपक्षों की बहस पर मनन किया गया व पत्रावलियों का अवलोकन किया गया। हस्तगत प्रकरण के विवादित बिन्दु के निर्णय के क्रम में वैट अधिनियम व नियम के सुसंगत प्रावधानों यथा वैट अधिनियम की धारा 2(07), 2(17), 10, 18 व 21 राजस्थान मूल्य परिवर्धित कर नियम 2006 के नियम 18, नियम 19, नियम 36, फॉर्म वैट 07 का अध्ययन आवश्यक है, जो निम्न प्रकार हैं -

2. Definitions. -

(7) "capital goods" means plant and machinery including parts and accessories thereof, meant for use in manufacture unless otherwise notified by the State Government from time to time in the Official Gazette;

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(17)“input tax” means tax paid or payable by a registered dealer in the course of business, on the purchase of any goods made from a registered dealer;

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.

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.





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- (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.

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.

Rule 18. Computation of input tax credit.

- (1) The extent of input tax credit available to a registered dealer, for a tax period, shall be equal to the amount of tax paid on purchases in the State as evident from the Original VAT invoice, and where such invoice has been lost or destroyed, on the basis of duplicate copy thereof issued to him in accordance with sub-rule (4) of rule 38, subject to the other provisions of this rule and the following conditions:-





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(a) that such dealer has maintained a true and correct separate account of his purchases against VAT Invoices in Form VAT-07.

(b) that such dealer has maintained a true and correct separate account of his sales in Form VAT-08.

- (2) Input tax credit in respect of purchase of capital goods on VAT invoice by an existing unit shall be allowed in two half yearly equal installments in the month of September and March. However, in case of a new industry or expansion or diversification of an existing industry, such input tax credit shall be allowed in the above manner starting from the immediately succeeding September or March, after the first sale of the goods manufactured from such capital goods:

Provided that in case of an existing unit, where the per item value of the capital goods does not exceeds rupees one lac, the input tax credit shall be allowed in the tax period of their purchases.

- (3) Input tax credit in respect of raw material used in the manufacture of taxable goods given on lease, shall be available to the lessor in twelve equal monthly installments commencing from the month of issuance of first VAT invoice in respect of such lease.
- (4) Input tax credit in respect of taxable goods given on lease, shall be available to the lessor in twelve equal monthly installments commencing from the month of issuance of first VAT invoice in respect of such lease.
- (5) Input tax credit to the lessee in respect of lease money of capital goods, shall be available in the tax period in which the original VAT invoice has been received.
- (6) The input tax credit under this rule shall be available on the basis of books of accounts and records of the dealer. Where, the amount of input tax credit is not determinable from the books of accounts of the dealer, the amount of input tax credit shall be allowed proportionate to the extent for the purposes specified in sub-section (1) of section 18 of the Act.
- (6A) Where a dealer is required to deposit tax on all kinds of stone in all their forms, whether used as building material or otherwise, including Kota stone, marble and granite, at the check posts, such dealer, may by affixing a seal to this effect, shall mention on his VAT invoice, the total input tax credit available to him from the commencement of the year upto issuance of such invoice, the input tax credit he claimed, the balance of input tax credit available

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to him, and the amount of tax payable and deposited on the basis of VAT invoice. The dealer shall also authenticate such information on the VAT invoice itself. On receipt of such authenticated VAT invoice, the officer incharge of the check post shall collect the tax payable as per such VAT invoice. The dealers availing this facility shall submit monthly statement of his purchases along with available input tax credit in Form VAT-07 and output tax in Form VAT-08 within seven days of the close of the month, to the assessing authority.

- (7) Where the turnover of a dealer who has opted to pay tax under sub-section (2) of section 3, exceeds the limit of the said subsection or his liability accrues under clause (a) or (b) of sub-section (1) or under sub-section (5) of section 3, no input tax credit shall be allowed on the goods in stock on the date of occurrence of such event.
- (7A) Where a registered dealer having goods in stock which had not suffered tax at full rate, intends to exercise option to pay tax under sub-section (2) of section 3, he shall deposit tax on such stock at the rates applicable at the time of exercising the option, and proof of tax so deposited shall be submitted along with his application for exercising such option.
- (8) A registered dealer who opts to pay tax under sub-section (2) of section 3, the credit of input tax availed by him on the goods in stock shall be reversed.
- (9) The dealer opting for payment of tax under sub-section (2) of section 3 or section 5, shall not be entitled to claim input tax credit in respect of the goods in stock on the date of exercise of such option.
- (10) In case a dealer opts to pay tax in accordance with subsection (7) of section 4, the following procedure shall be adopted.
- (i) A registered dealer who opts to pay tax at the full rate on the maximum retail price of the notified goods under sub-section (7) of section 4, shall submit an application to this effect, on a plain paper to his assessing authority or officer authorized by the Commissioner, within sixty days of commencement of this Act or within thirty days of start of his business, whichever is later. For subsequent years, such application shall be submitted within thirty days of the commencement of the financial year. The opting dealer shall charge tax on the maximum retail price if it is exclusive of tax and in case the maximum retail price is inclusive of tax, the dealer shall charge tax on the price as calculated hereunder.



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Price = (Maximum Retail Price x 100) / (100 + Rate of tax)

The amount of tax so charged shall be the output tax of such dealer.

- (ii) Where a registered dealer purchases any goods from the dealer covered under sub-rule (1), sale of such goods made by him shall not be included for determining his turnover of sales as defined in clause (41) of section 2. Such dealer shall maintain a separate account of such goods, tax paid and reimbursement of tax so paid, and shall submit the details thereof, along with his returns to his assessing authority or authorized officer. He shall also indicate separately in his sale invoice, the amount of reimbursement of tax paid by him at the time of purchase.
- (iii) Where a registered dealer purchases any goods, as notified by the State government under sub-section (7) of section 4, from a registered dealer, other than the dealers specified in sub-rule (1), sale of such goods made by him shall not be included for determining his turnover of sales as referred to in clause (41) of section 2. Such dealer shall maintain a separate account of such goods, tax paid and reimbursement of tax so paid, and shall submit the details thereof, along with his returns to his assessing authority or authorized officer. He shall also indicate separately in his sale invoice, the amount of reimbursement of tax paid by him at the time of purchase.
- (11) The input tax credit under section 19 of the Act, for stock on the date of commencement of the Act shall be available only after the quarter ending on 30th June, 2006, and the eligible dealer shall be entitled to claim such credit in six equal monthly instalments starting from July 1, 2006, provided that such dealer has submitted the information required under sub-section (2) of section 93 of the Rajasthan Sales Tax Act, 1994, within the time specified in the notification. However, in case a dealer has availed such input tax credit even before the above specified period, such input tax credit would be reversed unless the dealer deposits interest for the period of earlier availment of such input tax credit up to March 31, 2008.

Rule 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



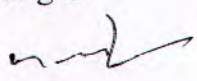
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quarter. However, where a dealer files return electronically along with the requisite documents or submits the same in the soft copy to the Department and informs his assessing authority or the officer authorised by the Commissioner, his intention to file monthly returns, he may file monthly returns within twenty days of the end of the month.

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.
- treasury receipt(s)/bank challan(s) of authorized bank as a proof of deposit of tax;
 - declaration forms/certificates/forms required under the rules or the notification issued by the State Government;
 - statement of purchases against VAT Invoices in Form VAT-07;
 - copy of statement of import in Form VAT-48;
 - 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;
 - statement of inter-State sales in Form VAT-50;
 - copy of sales return register in Form VAT-12, if applicable;
 - proof of export as specified in rule 28, if applicable; and
 - account of declaration forms along with details of use, and shall be signed and verified by the dealer himself or his business manager.




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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:

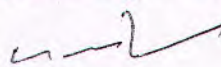
- (i) the trading account and in case of manufacturer, trading and manufacturing account; and
- (ii) the profit and loss accounts,

within nine months of the close of the year

- (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.

Rule 36. Accounts to be maintained by a dealer.

- (1) Subject to the provisions of section 71, every dealer registered under the Act shall maintain his accounts according to the system of accounting prevailing in the trade and industry.



- (2) Every dealer shall maintain a true and correct account of his purchases against VAT Invoices in Form VAT-07 and of his sales in Form VAT-08. The manufacturer shall also maintain a separate account of his purchases of capital goods against VAT Invoices, in part II of Form VAT-07.
- (3) Where such dealer is a manufacturer, he shall maintain the stock of raw material(s) used in Form VAT-33, and that of manufactured goods in Form VAT-34.
- (4) Every dealer shall also maintain separate accounts of transactions in the course of inter-State trade or commerce.
- (5) Every dealer registered under the Act shall maintain separate accounts for exempted goods and so also for the goods taxable at different rates.
- (6) The audit report required to be furnished by the dealer under sub-section (1) of section 73 shall be furnished within nine months from the end of the relevant financial year, in the form as may be specified by the Commissioner. However, the audit report for the year 2006-07 may be furnished upto 31.03.2008 and for the year 2007-08 may be furnished upto 31.03.2009.

FORM VAT-07

[See Rule 18(1)(a), 19(3)(c) & 36]

Purchase Register/Statement of PURchases against VAT Invoices

1. Name of the Dealer
2. Registration No. (TIN)

Part - I

(For Purchases of Goods within state other than Capital Goods)

Sr. No.	VAT Invoice No.	Date of VAT Invoice	Name of Selling Dealer	Registration No. (TIN) of selling dealer	Name of Goods	Schedule number along with S.No.of Goods	Purchase Value	VAT paid	Gross amount of VAT Invoice
1	2	3	4	5	5A	5B	6	7	8

Part - II

(For Purchases of Capital Goods within state)

Sr. No.	VAT Invoice No.	Date of VAT Invoice	Name of Selling Dealer	Registration No. (TIN) of selling dealer	Name of Goods	Schedule number along with S.No.of Goods	Purchase Value	VAT paid	Gross amount of VAT Invoice
1	2	3	4	5	5A	5B	6	7	8

Place.....
Date.....

Signature.....
Name.....
Status with seal.....

Note : Entries in column No.5-B of Part I and Part II are required to be filled in only by the dealers which are registered under the Companies Act, 1956 (Central Act No. 1 of 1956).

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7. हस्तगत प्रकरणों में विवाद का बिन्दु यह है कि अपीलार्थी व्यवहारी ने Capital Goods की I.T.C का दावा अधिनियम व नियम के प्रावधानों में विहित समयावधि में नहीं किया है तो ऐसी स्थिति में Capital Goods की I.T.C का दावा अनुज्ञेय होगा अथवा नहीं।

8. माननीय कर्नाटक उच्च न्यायालय द्वारा इस संबंध में दी गई व्यवस्था निम्न प्रकार है -

[2015] 77 VST 117 (Karn) STATE OF KARNATAKA v/s CENTUM INDUSTRIES PRIVATE LIMITED DATED 31.07.2014

VALUE ADDED TAX-INPUT-TAX REBATE-RETURN-DEALER PAYING INPUT TAX FOR JUNE 2006 NEITHER CLAIMING REBATE IN RETURNS FILED IN JULY 2006 NOR FILED REVISED RETURN WITHIN SIX MONTHS CLAIMING REBATE-NOT ENTITLED TO CLAIM BEYOND SIX MONTHS-KARNATAKA VALUE ADDED TAX ACT, 2003 (32 of 2004), ss 10(3), (4), 35(1), (4).

The assessee-dealer paid input tax for the month of June under the Karnataka Value Added Tax Act, 2003 but did not put forth any claim for rebate in the returns filed in July 2006. He did not file any revised return within 6 months putting forth that claim but made the claim in the monthly returns filed in respect of the period of February 2007. The claim was rejected by the assessing authority and that order was affirmed by the first appellate authority. However the Tribunal allowed the appeal and granted the input-tax credit. On an appeal :

Held, allowing the appeal, that when a specific period is prescribed for filing of the return under section 35(1) of the Act, for filing of a revised return under section 35(4) of the Act and it was categorically stated in sub-section (3) of section 10 that the input tax would be accounted in accordance with the provisions of this Act the assessee would not be entitled to the benefit conferred on him under sub-section (4) of section 10 if it was not accounted for in accordance with the provisions of the Act. In that case he lost his right to claim input deduction. Therefore the order by the Tribunal was to be set aside.

9. माननीय कर्नाटक उच्च न्यायालय द्वारा इस संबंध में दी गई व्यवस्था निम्न प्रकार है -

[2014] 72 VST 472 (Karn) SUMA OIL AGENCIES v/s ADDITIONAL COMMISIONER OF COMMERCIAL TAXES, ZONE-II, GANDHINAGAR, BANGALORE DATED 12.03.2014

VALUE ADDED TAX-INPUT-TAX CREDIT-PURCHASES FROM DEALER WHOSE TRADER INDENTIFICATION NUMBER FOUND TO BE INVALID-BURDEN ON DEALER TO PROVE TRANSACTIONS NOT DISCHARGED-DEALER NOT ENTITLED TO INPUT-TAX CREDIT IN RESPECT OF THOSE PURCHASES-PURCHASE OF CANTER FITTED WITH TANKER FOR TRANSPORTATION OF TAXABLE EDIBLE OIL FROM ONE PLACE TO ANOTHER-"CAPITAL GOODS", "INPUT"-DEFINITIONS-DEALER ENTITLED TO INPUT-TAX CREDIT IN RESPECT THEREOF-FAILURE TO CLAIM INPUT-TAX CREDIT IN RESPECT OF PURCHASE OF OTHER CAPITAL GOODS IN RETURNS IN APPROPRIATE FORM WITH SUPPORTING DOCUMENTS-DEALER NOT ENTITLED TO CREDIT-KARNATAKA VALUE ADDED TAX ACT, 2003(32 of 2004), ss 2(7), (19), 10(4), 12-KARNATAKA VALUE ADDED TAX RULES, 2005, r. 133.

10. माननीय केरल उच्च न्यायालय द्वारा इस संबंध में दी गई व्यवस्था निम्न प्रकार है -

[2011] 46 VST 86 (Ker) K.V. PAUL v/s STATE OF KERALA DATED 14.03.2011

VALUE ADDED TAX-CONCESSIONAL RATE OF TAX-INPUT-TAX CREDIT-PENALTY-DEALER PAYING TAX AT LOWER RATE AVAILING OF BENEFIT EVEN AFTER ITS TURNOVER EXCEEDED 50 LAKHS-NOTICE PROPOSING ASSESSMENT AND LEVY OF PENALTY ISSUED-DEALER FILING REVISED RETURNS AND REMITTING TAX, THAT TOO AFTER AVAILING OF INPUT-TAX CREDIT-AVALEMENT OF INPUT-TAX CREDIT WITHOUT COMPLYING WITH RULES NOT JUSTIFIED-REDUCTION OF PENALTY BY TRIBUNAL ON FACTS JUSTIFIED-KERALA VALUE ADDED TAX ACT, 2003 (30 of 2004)-KERALA VALUE ADDED TAX RULES, 2005.

11. अपीलार्थी के विद्वान अभिभाषक द्वारा प्रस्तुत राजस्थान कर बोर्ड की माननीय खण्डपीठ द्वारा दिये गये निर्णय का ससम्मान अध्ययन किया गया परन्तु हस्तगत प्रकरण के तथ्यों से भिन्नता के कारण लागू नहीं होने योग्य पाया जाता है।



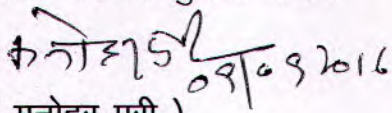


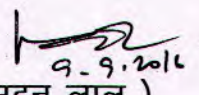
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12. हस्तगत प्रकरण में अभिलेख में उपलब्ध सामग्री के अध्ययन से स्पष्ट है कि अपीलार्थी व्यवहारी ने Capital Goods की I.T.C का दावा वैट अधिनियम की धारा 21 की पालना में विहित समयावधि में प्रस्तुत रिटर्न के साथ फॉर्म वेट-07 में नहीं किया गया है, धारा 18(2) की पालना में 3 महीने की समयावधि में Capital Goods की I.T.C का दावा नहीं किया गया है। नियम 19(6) में प्रावधित किया गया है कि रिवाइज्ड रिटर्न धारा 24 में जारी किये गये नोटिस के पहले ही दिया जा सकता है। हस्तगत प्रकरण में वैट-10 की कमियों के संबंध में जहां दिनांक 15.01.2010 का नोटिस जारी किया जाकर स्थिति स्पष्ट करने हेतु निर्देशित किया गया था। इसके पश्चात दिनांक 15.03.2010 को दो रिवाइज्ड रिटर्न प्रस्तुत किये गये हैं वो नियम 19(6) के प्रावधानों की पालना में अस्वीकार किये जाने योग्य है। कर निर्धारण वर्ष 2008-09 में Capital Goods के रूप में ट्रक की खरीद पर दावा की गई I.T.C के संबंध में अपीलीय अधिकारी के आदेश की पुष्टि की जाती है कि ट्रक केवल ट्रांसपोर्टेशन में ही प्रयोग होने के कारण Capital Goods की परिभाषा में नहीं आता है तथा I.T.C का दावा अस्वीकार किया जाना विधिसम्मत है। इसी क्रम में अपील संख्या 1757 / 2012 में भी अपीलीय अधिकारी के आदेश की पुष्टि की जाती है।

13. उपरोक्त विस्तृत विधिक एवं तथ्यात्मक विवेचना के पश्चात यह निष्कर्षित किया जाता है कि अपीलीय अधिकारी द्वारा Capital Goods की I.T.C का दावा अस्वीकार करने में कोई त्रुटि नहीं की गई है। तीनों अपीलों के संबंध में अपीलीय अधिकारी के आदेश की पुष्टि की जाती है। तीनों अपीलों अस्वीकार किये जाने योग्य होने के कारण अस्वीकार की जाती है।

14. निर्णय सुनाया गया।


(मनोहर पुरी)
सदस्य


(मदन लाल)
सदस्य