

राजस्थान कर बोर्ड, अजमेर

1. अपील संख्या – 800 / 2011 / भरतपुर.

मैसर्स एम. जे. इण्डस्ट्रीज, भरतपुर.

.....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), भरतपुर

2. वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर.

.....प्रत्यर्थी.

2. अपील संख्या – 819 / 2011 / भरतपुर.

मैसर्स जे. आर. इण्डस्ट्रीज एण्ड ऑयल मिल, भरतपुर.

.....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), भरतपुर

2. सहायक आयुक्त, वृत्त-ए, भरतपुर.

.....प्रत्यर्थी.

3. अपील संख्या – 1079 / 2011 / भरतपुर.

मैसर्स एस. वी. एम. ऑयल इण्डस्ट्रीज, भरतपुर.

.....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), भरतपुर

2. वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर.

.....प्रत्यर्थी.

4. अपील संख्या – 1080 / 2011 / भरतपुर.

मैसर्स आर. एस. दाल ऑयल इण्डस्ट्रीज, भरतपुर.

.....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), भरतपुर

2. वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर.

.....प्रत्यर्थी.

5. अपील संख्या – 1081 / 2011 / भरतपुर.

मैसर्स डी. आर. ऑयल्स प्रा० लिमिटेड, भरतपुर.

.....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), भरतपुर

2. वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर.

.....प्रत्यर्थी.

एकलपीठ

श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री अलकेश शर्मा, अभिभाषक

.....अपीलार्थीगण की ओर से.

श्री एन. के. बैद,

उप-राजकीय अभिभाषक

.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 18 / 04 / 2016

निर्णय

1. उपरोक्त पाँच अपीलें अपीलार्थी व्यवहारीगण ने उपायुक्त (अपील्स) वाणिज्यिक कर भरतपुर, (जिसे आगे 'अपीलीय अधिकारी' कहा जायेगा) के द्वारा पारित आदेशों के विरुद्ध राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 (जिसे आगे 'वेट अधिनियम' कहा जायेगा) की धारा 83 के तहत प्रस्तुत की गयी हैं। अपीलीय अधिकारी ने उक्त आदेशों से वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर / सहायक आयुक्त, वृत्त-ए, भरतपुर (जिन्हें आगे 'कर

लगातार.....2



1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1801. It is a very important document, as it is the first official communication of the new administration.

2. The second part of the document is a report from the Secretary of the Treasury, dated January 1, 1801. It contains information about the state of the nation's finances at the time.

3. The third part of the document is a report from the Secretary of the Navy, dated January 1, 1801. It contains information about the state of the navy at the time.

4. The fourth part of the document is a report from the Secretary of the War, dated January 1, 1801. It contains information about the state of the army at the time.

5. The fifth part of the document is a report from the Secretary of the Interior, dated January 1, 1801. It contains information about the state of the interior at the time.

6. The sixth part of the document is a report from the Secretary of the State, dated January 1, 1801. It contains information about the state of the world at the time.

7. The seventh part of the document is a report from the Secretary of the War, dated January 1, 1801. It contains information about the state of the army at the time.

8. The eighth part of the document is a report from the Secretary of the Navy, dated January 1, 1801. It contains information about the state of the navy at the time.

9. The ninth part of the document is a report from the Secretary of the Treasury, dated January 1, 1801. It contains information about the state of the nation's finances at the time.

10. The tenth part of the document is a report from the Secretary of the State, dated January 1, 1801. It contains information about the state of the world at the time.



निर्धारण अधिकारी' कहा जायेगा) द्वारा अपीलार्थीगण की आलौच्य अवधि वर्ष 2007-08 के लिये केन्द्रीय विक्रय कर अधिनियम, 1956 (जिसे आगे 'केन्द्रीय अधिनियम' कहा जायेगा) की धारा 9 सपठित धारा 24, 55 व 61 वेट अधिनियम के तहत पारित किये गये पृथक-पृथक कर निर्धारण आदेशों के विरुद्ध प्रस्तुत अपीलों को अस्वीकार किया है।

2. इन पाँचों अपीलों में विवादित बिन्दु समान होने से सभी अपीलों का निस्तारण एक ही निर्णय से किया जाकर निर्णय की प्रति प्रत्येक पत्रावली पर पृथक-पृथक रखी जा रही है।

3. प्रकरणों के संक्षिप्त तथ्य इस प्रकार है कि अपीलार्थी व्यवहारीगण द्वारा कर निर्धारण वर्ष 2007-08 के दौरान अन्तर्राज्यीय व्यापार के क्रम में सरसों तेल की बिक्री घोषणा पत्र 'सी' के समर्थन में करना घोषित किया तथा इस संबंध में राजस्थान मूल्य परिवर्धित कर अधिनियम की धारा 17(2) के अधीन समयपूर्व रिफण्ड भी प्राप्त कर लिया था। अपीलार्थी व्यवहारी ने अन्तर्राज्यीय व्यापार के क्रम में घोषणा प्रपत्र 'सी' के समर्थन पर घोषित विक्रय के संबंध में प्रस्तुत किये गये घोषणा पत्र 'सी' की जाँच क्रेता व्यवहारीगण के राज्य बिहार से कराये जाने पर पाया गया कि प्रस्तुत किये गये घोषणा पत्र 'सी' वैध फार्म नहीं है क्योंकि प्रस्तुत किये गये प्रपत्र बिहार राज्य के बिक्री कर विभाग के क्रेता व्यवहारियों के कर निर्धारण अधिकारी द्वारा विधिक रूप से जारी किये गये प्रपत्र नहीं हैं। कर निर्धारण अधिकारी ने ऐसे प्रपत्रों को मिथ्या व बोगस ठहराते हुये कर व शास्ति का आरोपण किया है। जिनका संक्षिप्त विवरण निम्न तालिका में दिया गया है :-

अपील संख्या	अपीलार्थी	अपीलीय आदेश क्रमांक	अपीलीय आदेश दि.
1	2	3	4
800 / 2011	एम. जे. इण्डस्ट्रीज	91 / उपा-अपील्स / 2010-11	03.12.2010
819 / 2011	जे.आर.इण्ड. एण्ड ऑयल मिल	54 / उपा-अपील्स / 2010-11	02.12.2010
1079 / 2011	एस.वी.एम. ऑयल इण्डस्ट्रीज	907 / उपा-अपील्स / 2010-11	24.02.2011
1080 / 2011	आर.एस.दाल ऑयल इण्डस्ट्रीज	29 / उपा-अपील्स / 2010-11	24.02.2011
1081 / 2011	डी.आर.ऑयल्स प्रा0 लिमि.	32 / उपा-अपील्स / 2010-11	24.02.2011

कर निर्धारण आदेश दि.	प्रतिदाय राशि (कर)	ब्याज	शास्ति
5	6	7	8
23.03.2010	1,92,146 / -	40,060 / -	5,34,128 / -
31.03.2010	1,27,596 / -	76,557 / -	5,10,382 / -
31.03.2010	84,684 / -	50,810 / -	3,38,736 / -
31.03.2010	73,850 / -	44,310 / -	2,95,402 / -
31.03.2010	37,364 / -	22,418 / -	1,49,456 / -



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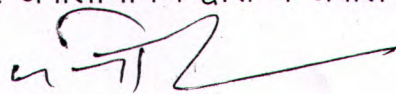
4. अपीलार्थी व्यवहारीगण के विद्वान अभिभाषक ने बहस में कथन किया की माननीय राजस्थान कर बोर्ड की खण्डपीठ द्वारा समान बिन्दु की 41 अपीलों का निर्णय दिनांक 25.06.2015 को किया गया है। जिसमें अविधिक/बोगस/मिथ्या 'सी' फार्म के प्रस्तुत करने पर आरोपित अन्तर कर व ब्याज की पुष्टि की है तथा शास्ति को अपास्त किया है। विद्वान अभिभाषक ने अग्रिम कथन किया कि हस्तगत प्रकरण माननीय खण्डपीठ के निर्णय दिनांक 25.06.2015 से पूर्णतः आच्छादित है। अतः अपीलें तदनुसार स्वीकार करने की प्रार्थना की है।

5. प्रत्यर्थी राजस्व की ओर से विद्वान उप-राजकीय अभिभाषक ने अपीलीय आदेशों का समर्थन किया तथा अपीलार्थी व्यवहारीगण की अपीलें अस्वीकार करने की प्रार्थना की।

6. उभयपक्षीय बहस सुनी गयी रिकार्ड का परिशीलन किया गया।

7. हस्तगत प्रकरणों में कर निर्धारण अधिकारी द्वारा अपीलार्थीगण को वेट अधिनियम की धारा 17(2) के प्रावधान सपठित केन्द्रीय अधिनियम के प्रावधान के अधीन आयुक्त, वाणिज्यिक कर राजस्थान द्वारा सरसों तेल के विनिर्माताओं को समयपूर्व प्रतिदाय जारी करने के निर्देशों/आदेशों क्रमांक एफ. 16(327)टैक्स/वेट/सीसीटी/06/1696 दिनांक 17.10.2006 के अनुसरण में आवश्यक जांच उपरान्त एवं प्रथम बिन्दु पर कर जमा के सत्यापन के पश्चात आलौच्य अवधि के लिये प्रतिदाय राशियां समयपूर्व जारी की गयीं।

8. उपरोक्त समयपूर्व प्रतिदाय दिये जाने के पश्चात बिहार राज्य से यह संसूचित होने पर कि उनके राज्य में पंजीकृत व्यवहारियों के द्वारा प्रस्तुत घोषणा-पत्र 'सी' केन्द्रीय बिक्री कर अधिनियम की धारा 8(4) के प्रयोजनार्थ अमान्य/अप्रमाणिक हैं। क्योंकि उनका पंजीकरण निरस्त किया जा चुका है। समयपूर्व दे दिये गये प्रतिदाय में से उन संव्यवहारों से सम्बन्धित जिनका कि पंजीकरण निरस्त हो चुका था तथा कर की गणना रियायती दर से करते हुए प्रतिदाय दिया जा चुका था, को प्रतिदाय की राशि कम करते हुए अधिक त्रुटिपूर्ण दिये जा चुके प्रतिदाय को वसूली योग्य मानते हुए, तदनुसार अन्तर कर, ब्याज एवं करापवंचन के लिये धारा 61 के तहत शास्तियों का आरोपण किया गया है। अपीलार्थी व्यवहारीगण द्वारा कर निर्धारण अधिकारी के उक्त आदेशों के विरुद्ध प्रस्तुत की गयी अपीलें, अपीलीय अधिकारी द्वारा अस्वीकार किये जाने से व्यथित होकर अपीलार्थीगण द्वारा ये अपीलें प्रस्तुत की गयी हैं।



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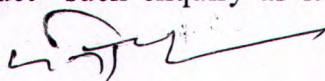
9. प्रकरण के तथ्यों के सन्दर्भ में माननीय उच्चतम न्यायालय के न्यायिक दृष्टान्त 139 एस.टी.सी. 329 (एस.सी.) इण्डिया एजेंसीज (रजि.) बनाम अतिरिक्त आयुक्त, वाणिज्यिक कर बेंगलोर के पैरा 15 में निम्न व्यवस्था दी गयी है :—

"The very purpose of prescribing the filing of C forms is that there should not be suppression of any inter-State sales by a selling dealer and evasion of tax to the State from where the actual sales are effected. **Secondly, the purchasing dealer also cannot suppress such purchases once he issues C form to the selling dealer. Since the dealer should issue C form has to maintain a detailed account of such C forms obtained from the department prescribed under the States taxation law.** The C form is a declaration to be issued only by the sales tax authorities of concerned States. By issuing declaration in C form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4 per cent as prescribed by the concerned State of purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where selling dealer is situated."

10. माननीय उच्चतम न्यायालय के मैसर्स सुरेश ट्रेडिंग कम्पनी (1998) 109 एस.टी.सी. 439 के तथ्यों से हस्तगत प्रकरण में भिन्नता है कि वहां करमुक्त माल पर करारोपण करने का बिन्दु विवादित था। हस्तगत प्रकरण में समयपूर्व दिये जा चुके प्रतिदाय में से उन संव्यवहारों पर जो कि 'सी' फॉर्म क्रेता व्यवहारी के राज्य द्वारा अवैध घोषित किये जा चुके थे, पर प्रतिदाय की राशि कम करने का बिन्दु निहित है।

11. इसी प्रकार माननीय केरल उच्च न्यायालय के न्यायिक दृष्टान्त (2010) 28 वी.एस.टी. 82 (केरल) के. सादिकअली बनाम वाणिज्यिक कर अधिकारी में निम्न सिद्धान्त प्रतिपादित किया गया है :—

"(iii) That what is contemplated in sub-rule (3)(i) of rule 47A of the Rules was only a cross verification if found necessary, **for the satisfaction of the assessing authority, with respect to genuineness of the claim or genuineness of the documents produced in support.** The assessing authority would not be justified in insisting on production of additional proof for the purpose of such verification. If the dealer had already discharged his initial burden cast upon him by virtue of rule 47(2). It was for the assessing authority to conduct "such enquiry as it considers necessary". Any



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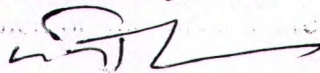
such enquiry, which is basically in the nature of a cross verification, was the duty cast upon the assessing authority. The dealer's initial burden of proving entitlement for refund should be presumed discharged, on his production of materials which clearly indicate payment of input tax. Thus the rejection of the claim for refund was liable to be quashed and the Commercial Tax Officer was to take up the refund application on file and after making verifications and enquiries if found necessary, pass final orders refunding unadjusted input tax allowable."

12. राजस्थान मूल्य परिवर्धित कर नियम, 2006 के नियम 27 (Refund) का अवलोकन किया जाना जाना भी समीचीन होगा, जो निम्न प्रकार है :-

**27. Refund.**

(1) (a) Subject to the provisions of sub-section (2) of section 17, section 53 and section 54, where the assessing authority or the authorized officer after having verified deposits, **is satisfied that the payment made by a dealer or a person is in excess of any tax, penalty, interest or other sum due, as a result of an assessment made or in pursuance of an order passed by any competent officer, authority or court, such assessing authority or authorized officer, either *suo motu* or on an application made in this behalf in Form VAT-20 or VAT-21 or VAT-22 as the case may be, shall pass an order for refund, and shall issue a refund order in Form VAT-23A within fifteen days of the order for refund, directing the bank, as may be specified by the Commissioner, to transfer the amount of refund into the account of the dealer mentioned in the said Form and shall send a copy thereof to the Treasury Officer or Sub-Treasury Officer as may be directed by the Commissioner. However, where details of bank of the dealer or the person are not available on the record, the refund order shall be issued in Form VAT-23, within fifteen days of the order for refund, along with an advice to the Treasury Officer or Sub-Treasury Officer or the Manager of the Bank authorized to receive money on behalf of the State Government, in Form VAT-24.**

(aa) Where the refund of tax, demand or other sum has been made electronically, the authorized bank shall forward a statement of such refunds, on the same day, in part-B of Form VAT-45A to the concerned treasury of the State and a copy of such statement shall be forwarded to the Accountant General Rajasthan.



लगातार.....6



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ADMISSIONS OFFICE

For information on admission to the University of Chicago, please contact the Admissions Office. We are currently accepting applications for the fall semester. The deadline for admission is January 15th. For more information, please visit our website at [www.uchicago.edu/admissions](http://www.uchicago.edu/admissions) or call 773-936-5000. We are looking for students who are academically excellent and who will contribute to the University community. Please send your application materials to the Admissions Office, 5408 S. Dickinson Drive, Chicago, IL 60637.

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(b) Where a dealer desires the adjustment of the refund to be made under sub-clause (a), against any amount payable by him, the assessing authority or the authorized officer, as the case may be, shall issue a refund adjustment order in Form VAT-25 authorizing him to deduct the amount refundable from the amount payable by him.

(2) Notwithstanding anything contained in sub-rule (1), where a demand is outstanding against a dealer or a person who is entitled to a refund, the assessing authority or the authorized officer shall *suo motu* issue a refund adjustment order in Form VAT-25 for adjusting the refund against such outstanding demand.

(3) No claim of refund shall be rejected without giving the dealer or the person claiming refund, an opportunity of being heard and without recording reasons in writing.

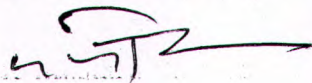
13. वेट अधिनियम की धारा 17(2) के प्रावधानों की पालना में आयुक्त, वाणिज्यिक कर राजस्थान के आदेश क्रमांक एफ.16(327)टैक्स/वैट/सीसीटी/06/1696 दिनांक 17.10.2006 के द्वारा सरसों तेल के विनिर्माताओं को समय से पूर्व प्रतिदाय का परिपत्र निम्नानुसार जारी किया गया है, जिसकी पालना में कर निर्धारण अधिकारी ने समय से पूर्व प्रतिदाय जारी किया है। परिपत्र निम्नानुसार है :-

**No. F.16(327)Tax/VAT/06/1696**

**Dated 17.10.2006**

Oil seed, edible oil and oil-cake (except cotton seed oil cake) are taxable at the rate of 4% in the State. Whereas, the rate of CST on sale of the mustard oil manufactured in the State is 1% under sub-section (5) of section 8 of CST Act, 1956. Oilcake (including cotton seed oil cake) attracts 4% tax on its inter-State sales and de-oiled cake is exempt both in inter-State and intra-State sales.

Substantial part of the mustard oil manufactured in the State is being sold in the course of inter-State trade or commerce. In such cases, the net tax payable by the mustard oil manufacturers of the State; has a negative value, such dealers are entitled to get refunds of the excess amount of tax paid on mustard seed. As per the provisions of sub-section (2) of section 17 of the Rajasthan Value Added Tax Act, 2003 any refund has to be made only after the end of the immediately succeeding year, after first adjusting the same against any tax payable or amount outstanding under the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) or under this Act or the repealed Act. However, the Commissioner after recording reasons for doing so may, by a general or a specific order, direct to grant such refunds even earlier.



लगातार.....7



THE UNIVERSITY OF CHICAGO  
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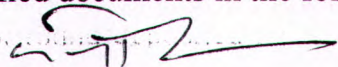


The representative Associations of the mustard oil manufacturers have requested that in the present scenario, substantial amount of their working capital is getting locked up, resulting in adverse impact on their business, therefore, early refunds may be granted.

Keeping in view the fact that mustard oil industry has a vital role in the economy of the State, early grant of refunds would facilitate this sector. In view of this it appears rational and appropriate that the mustard oil manufacturers may be granted early refunds as per the provisions of sub-section (2) of section 17 of the Act. It is, therefore, directed that where the net tax payable for any quarter has a negative value, the same shall be first adjusted against any tax payable or amount outstanding under the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) or under this Act or the repealed Act, the claimant registered dealer manufacturing mustard oil exclusively shall submit an application in Form-A appended hereunder, to the assessing authority for the remaining amount, along with the following documents:-

1. Self attested copies of purchase VAT invoices, on basis of which refund is being claimed.
2. Declaration of the registered dealer issuing above referred VAT invoice(s) in Form-B appended hereunder, the goods have been sold by him to the dealer claiming refund on their basis, along with details of deposit of VAT in the Government treasury regarding such sales.
3. Self attested copies of the sale (VAT) invoices.
4. An undertaking attached to Form-A by the dealer claiming early refunds, that in case it is found that the full tax leviable on mustard oil seed under the Act, has not been paid to the State Government at any of the earlier stages, he undertakes to deposit such amount refunded to him along with the interest at the rate notified by the State Government under section 55 of the RVAT Act, 2003, within ten days of the receipt of notice from the assessing authority.
5. Security equal to the amount to be refunded, in any form as prescribed under rule 77 of the Rajasthan VAT Rules, 2006, to the satisfaction of the assessing authority, to make payment of the refunded amount, in case such amount is not found deposited in the State treasury or refund has been found to be in excess of the refund due under the Act.
6. Certificate of Chartered Accountant as to the correctness of claim of refund in Form-C. The Claim of concessional rate of tax will be limited to the extent of the declaration forms furnished by the dealer at the time of filing of the relevant return.

In view of the above reasons, it is hereby directed that all assessing authorities, after having been satisfied with the genuineness of the transactions and the relevant documents, shall dispose of the application of the mustard oil manufactures claiming early refunds within a period of thirty days from the date of submitting completed application in Form-A along with the above specified documents in the following manner :-



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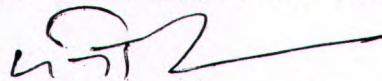
- (i) The assessing authority shall pass speaking order. Where refund is allowed partially or disallowed, the applicant shall be afforded opportunity of being heard before passing such order.
- (ii) Where the refund in part or in full is allowed, he shall issue refund order to the applicant in the manner specified under the Rajasthan VAT Rules, 2006.
- (iii) Where the mustard oil has been manufactured by the unit taken on rent / lease, early refund shall be allowed to the extent of 75% of the refundable amount. However, refund of remaining amount of 25% shall be granted on furnishing of a bank guarantee valid for the period upto 31st March of the succeeding year, payable by a branch of Nationalized Bank situated in the State.
- (iv) Subsequent to the passing of such order, if it is found that refund was granted in excess of the actual refund due, such excess refunded amount shall be recovered as if it is a tax due from the dealer under this Act and the interest such tax shall be charged at the rate notified by the State Government under section 55 of the RVAT Act, 2003 for the period from the date of grant of refund, till the date such amount is paid in the Government treasury.
- (v) A separate register shall be maintained by each assessing authority for all the applications received for early refund and action taken thereon.

In case where refunds have been issued, the assessing authority should take steps on priority basis to finalize the pending assessments of such dealers, to verify the transactions upto the first point in the series of sales, on the basis of which refund has been claimed, to ensure actual deposit of tax of so refunded, and to get verified the declaration forms submitted by the dealer in support of concessional rate of tax.

It should be ensured that no undue hardship is caused to the applicants and the applications are disposed of within the stipulated time. The Deputy Commissioner (Adm) shall monitor the cases of such refunds. Additional Commissioners should also review a few cases of such refunds during their visits to the offices.

14. माननीय उच्चतम न्यायालय द्वारा मैसर्स इण्डिया एजेंसीज के मामले में दिये गये निर्णय, जो कि पैरा 8 में वर्णित है, में पैरा 15 में यह मत प्रतिपादित किया गया है कि —

(i) केन्द्रीय बिक्री कर अधिनियम के अधीन घोषणा-पत्र 'सी' विहित करने का उद्देश्य यह है कि अन्तर्राज्यीय व्यापार के क्रम में की गई बिक्री को विक्रेता राज्य जहां से वास्तव में बिक्री प्रभावित की गई है, विक्रेता व्यवहारी द्वारा छिपाया नहीं जा सके तथा करापवंचन नहीं किया जा सके; तथा



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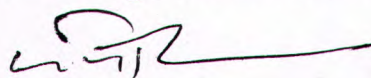
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(ii) साथ-साथ ही क्रेता व्यवहारी द्वारा भी उसके द्वारा की गई खरीद को नहीं छिपाया जा सके, क्योंकि क्रेता व्यवहारी के द्वारा विक्रेता व्यवहारी को 'सी' फॉर्म जारी कर दिये जाने के पश्चात खरीद को नहीं छिपाया जा सकता है। घोषणा-पत्र जारी करने वाला क्रेता व्यवहारी जारी किये गये घोषणा-पत्रों का विस्तृत लेखा सम्बन्धित राज्य के विभाग, जहां से घोषणा-पत्र प्राप्त किये गये हैं, को प्रस्तुत करेगा। क्रेता व्यवहारी घोषणा-पत्र 'सी' जारी करने से लाभान्वित होता है क्योंकि वह रियायती कर दर, जो भी विहित की गई है, पर माल खरीदता है।

15. माननीय उच्चतम न्यायालय के उक्त निर्णय में दिये गये मत की पालना में यह निष्कर्षित किया जाता है कि प्रत्यर्थी विक्रेता व्यवहारी के द्वारा बिहार राज्य के जिस क्रेता व्यवहारी को घोषणा-पत्र 'सी' के समर्थन पर रियायती कर दर से माल बेचना घोषित किया गया है तथा उस रियायती कर दर के आधार पर लाभ उठाते हुए समयपूर्व प्रतिदाय भी प्राप्त कर लिया गया है। क्रेता व्यवहारी द्वारा बिहार राज्य में इस खरीद को घोषित नहीं किये जाने के कारण बिहार राज्य के द्वारा क्रेता व्यवहारी के इन सन्दर्भित घोषणा-पत्र 'सी' को केन्द्रीय अधिनियम की धारा 8(4) के प्रयोजनार्थ अवैध घोषित किये जाने के फलस्वरूप इस विक्रय के संव्यवहार पर धारा 8(1) के रियायती कर दर 0.5 प्रतिशत लागू की जाकर दिया गया प्रतिदाय विधिसम्मत प्रतीत नहीं होता है। कर निर्धारण अधिकारी द्वारा प्रत्यर्थी को अधिनियम के अधीन देय प्रतिदाय से आधिक्य राशि का प्रतिदाय हो जाने के कारण प्रतिदाय का पुनर्भुगतान मय ब्याज करने के लिये पारित आदेश में कोई त्रुटि किया जाना नहीं पाया जाता है। इसी प्रकार अपीलीय अधिकारी द्वारा भी कर निर्धारण आदेश की पुष्टि किये जाने में कोई विधिक त्रुटि नहीं की गयी है।

16. माननीय राजस्थान कर बोर्ड की खण्डपीठ द्वारा मैसर्स श्री भगवती ऑयल इण्डस्ट्रीज भरतपुर बनाम वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, भरतपुर व अन्य में पारित निर्णय दिनांक 25.06.2015 न्यायिक दृष्टान्त 43 टैक्स अपडेट 01 में भी हस्तगत प्रकरण के सदृश तथ्यों पर निर्णय पारित करते हुए महाराष्ट्र राज्य के बिक्री कर विभाग द्वारा महाराष्ट्र राज्य के स्टेनलेस स्टील के व्यवहारियों के निरस्त किये गये 'सी' फॉर्म पर क्रीत माल के आधार पर, राजस्थान राज्य के व्यवहारियों द्वारा उक्त 'सी' फॉर्म के आधार पर समयपूर्व लिये गये प्रतिदाय को अविधिक घोषित करते हुए मय ब्याज वसूलनीय अवधारित किया गया है। साथ ही वेट अधिनियम की धारा 61 के तहत आरोपित शास्ति को अविधिक मानते हुए निरस्त किया गया है



लगातार.....10



The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The document also outlines the responsibilities of individuals involved in the process, including the need for transparency and accountability.

The second part of the document provides a detailed overview of the various methods used to collect and analyze data. It describes the different types of data sources, such as surveys, interviews, and focus groups, and explains how this information is used to identify trends and patterns. The document also discusses the challenges associated with data collection and analysis, such as ensuring the reliability and validity of the data, and provides strategies to overcome these challenges.

The third part of the document focuses on the application of the findings to the development of policies and programs. It discusses the importance of using evidence-based approaches to decision-making and provides examples of how the research findings have been used to inform policy development. The document also outlines the next steps in the research process, including the need for continued monitoring and evaluation to ensure the effectiveness of the interventions.



17. उपरोक्त तथ्यात्मक व विधिक विवेचना के पश्चात यह निष्कर्षित किया जाता है कि अपीलीय अधिकारी के द्वारा अपीलार्थी व्यवहारीगण की अपीलों में आरोपित अतिरिक्त कर व ब्याज के बिन्दु पर अपीलें अस्वीकार करने में कोई विधिक त्रुटि नहीं की गयी है। अतः इस सीमा तक अपीलार्थी व्यवहारीगण की अपीलें अस्वीकार किये जाने योग्य होने के कारण अस्वीकार की जाती हैं।

18. जहां तक धारा 61 के तहत आरोपित शास्ति का प्रश्न है, इस सम्बन्ध में माननीय उच्चतम न्यायालय ने श्रीकृष्णा इलेक्ट्रिकल्स (2010) 26 टैक्स अपडेट 01 में लेखा-पुस्तकों में बिक्री दर्ज होने पर करापवंचन की मंशा में आरोपित शास्ति को अविधिक निर्णीत किया है। उद्धरित निर्णय का सुसंगत अंश इस प्रकार है :-

**(2010) 26 टैक्स अपडेट 01 (S.C.)**

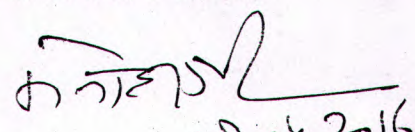
"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books, where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers' turnovers disallowing the exemption penalty cannot be imposed. The penalty levied stands set aside."

19. माननीय राजस्थान उच्च न्यायालय द्वारा वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, श्रीगंगानगर बनाम मैसर्स दुर्गेश्वरी फूड लिमिटेड के प्रकरण में पारित अभिनिर्णय (2012) 32 टैक्स अपडेट 03 में भी इसी प्रकार का अभिमत प्रतिपादित किया गया है।

20. अतः प्रस्तुत प्रकरणों में भी अपीलार्थी व्यवहारीगण द्वारा समस्त संव्यवहार का इन्द्राज लेखा-पुस्तकों में किये जाने के आधार पर, धारा 61 के तहत शास्ति का आरोपण किया जाना न्यायोचित नहीं माना जा सकता। अतः इस सीमा तक कर निर्धारण अधिकारी व अपीलीय अधिकारी के आदेश अपास्त किये जाने योग्य हैं।

21. परिणामस्वरूप अपीलार्थी व्यवहारी की अपीलें आंशिक रूप से स्वीकार करते हुए कर निर्धारण अधिकारी द्वारा वेट अधिनियम की धारा 61 के तहत आरोपित शास्ति को यथावत रखने की सीमा तक अपीलीय अधिकारी के अपीलाधीन आदेश अपास्त किये जाते हैं तथा कर निर्धारण अधिकारी द्वारा आरोपित अन्तर कर व ब्याज की राशि की पुष्टि करने सम्बन्धी अपीलीय आदेशों की पुष्टि की जाती है।

22. निर्णय सुनाया गया।

  
18.04.2016  
( मनोहर पुरी )  
सदस्य



