Rajasthan Tax Board, Ajmer

Appeal No. 89/2015/Jaipur

M/s Rajasthan Marketing,
Jaipur — Appellant

Vs

Assistant Commissioner, Commercial Taxes,
Circle-M, Jaipur. — Respondent

D.B.
Shri Rakesh Srivastava,Chairman
Shri Sunil Sharma,Member

Present:-

Respondent through, Deputy Government Advocate, Mr. N.K. Baid,

Appellant through Advocate, Mr.Ashok Hansaria

Order date 23.04.2015

JUDGMENT

Per Member,Sunil Sharma:

Appearing on behalf of M/s Rajasthan Marketing, Jaipur, Mr.Ashok Hansaria, learned counsel for the appellant, said that the appellant had come before the Rajasthan Tax Board (for brevity, " the Board "), after rejection of its stay application by the Appellate Authority against the recoverable demand to the tune of Rs.12,43,779/- raised in the assessment order dated February 10, 2014 made under section 23/24 of the Rajasthan Value Added Tax Act, 2003, (for short "the Act"), by the Assistant Commissioner, Circle M, Jaipur (for short, " the Assessing Authority"), seeking relief from recovery of the aforesaid dues under section 38(4) of the Act. The appellant was denied ITC rightfully due to him on account of his having purchased goods under consideration with due tax paid thereon to the selling dealers who were reported to have not deposited above tax in the government treasury.

(2) He argued that the statutory requirement to avail the input tax credit (for short, " ITC ") as laid down in sub section (2) of section 18 of the Act stipulated that it "***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 "*** but in case tax so realised was not deposited by the selling dealer, the tax collecting authority was enjoined upon to recover the amount of tax not paid in the government treasury from the defaulter selling dealers by making its assessments for relevant periods and if already made but escaped taxation in respect of the turnover related to ITC by reopening and assessing it afresh for the relevant assessment periods with levy of additional tax and interest.

(3) Describing section 21of the Act that dealt with filing returns, and quoting extensively from sections 22, 23, 24 and 30 of the Act, learned counsel for the appellant said that a body of elaborate provisions had been prescribed in the Act to make assessments of dealers in all eventualities, which are reproduced in brief herein:

Section **21 of the Act** relates to the filing of returns :

(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 shall furnish return for such period in such form and manner and within such time as may be specified.

Section 22(1) of the Act pertains to the assessment of a dealer on failure to deposit tax in accordance with the provisions of section 20 within the notified period, whereby the assessing authority, 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 ; and , sub section (2) thereof says that the tax assessed under the aforesaid 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 and as per sub section (3) of the section 22 of the Act, the tax deposited under sub–section (2) thereof shall be adjusted in the assessment for the relevant period.

In so far as, the **Section 23** of the Act is concerned, it caters to the scheme of the self assessment whereby (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.

The **Section 24** of the Act provides that in cases a return furnished by a registered dealer is subject to such scrutiny as to verify its correctness and if error is detected, the assessing authority shall serve a notice 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 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),-

(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 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.

As also **Section** 30 of the Act stipulates that in case of a dissolved partnership firm, assessment thereof under the Act shall be made in the same manner as if the firm had not been dissolved.

(4) learned counsel for the appellant emphasized that since provisions for making assessments of all sorts of dealers were neatly laid out in the scheme of the Act, the assessing authorities were under legal obligation to finalize the assessments of both the erring dealer and the compliant dealer. In instant case, they should have after making assessments of the selling dealer for the relevant periods, recovered dues from it to offset loss of ITC to the appellant which may have assuaged its woe of ITC

rejection in it that the selling dealer would naturally have had to cough out amount due tax to be deposited in the government treasury, and thereby appellant's claim of ITC would have been allowed by its assessing authority, for in absence of any lapse of tax deposition on the part of purchasing dealer in such a scenario, ITC could not have been withheld. However, the relevant assessing authorities failed in doing their job.

(5) Mr. Ashok Hansaria, learned counsel, for the appellant dealer contended that in the present context, ITC could not be denied to the appellant once it had duly paid the tax to the seller of goods and there was no stopping him to get it back through the instrument of ITC. He read out the statutory provisions starting from clause A to G of the section 18 of the Act and averred that it was a right of the registered dealer who had paid tax on the goods purchased for the purposes therein to be allowed credit of due input tax. In the perspective,the aforesaid section 18 of the Act is reproduced herein below:

Section 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.

(6) Support was drawn by learned counsel for the Appellant from the judgment of the Hon'ble Punjab and Haryana High Court in the case of M/s Gheru Lal Bal Chand V/s State of Haryana and anr., reported in 2007 (4) SCC 19 BHT, to lay emphasis on the appellant's valid claim for grant of ITC in present case.

(7) The case of the petitioner therein was that he was registered under the relevant provisions of the Haryana Vat Act (for brevity, " the HV Act") as dealer and made sales and issued tax invoices in terms of the section 8 of the H V Act to the registered purchasing dealers; and, thus was entitled to claim input tax credit.

(8) The dealer making purchases was required ensuring that the dealer selling the goods was also a registered dealer and had issued tax invoice as per provisions of the HV Act. In the eventuality of a claim of input tax credit made in respect of goods sold to a dealer being called into question, the purchasing dealer, as per the mandate of Section 8(3) of the

HV Act, was called upon to produce before the authority conducting the proceedings, a certificate to be issued by the selling dealer. Such claim could only be allowed if the assessing authority was satisfied about the contents of the certificate. Whenever the petitioner effected purchases from the selling dealers, it obtained requisite VAT invoices and Forms VAT C-4 in terms of Rule 20 of the Haryana VAT Rules accompanied with a certificate from the selling dealers to this effect that they had paid full amount of tax under the H V Act on the sales made to the petitioner. The petitioner also filed its returns for different periods showing sales and purchases.

The Assessing Officer issued show cause notice to the petitioner on the ground that it had effected purchases from certain dealers who had not deposited tax in the treasury and created a demand which was subject matter of challenge in the petition cited supra. The further challenge was made by the petitioner to the vires of Section 8(3) of the HV Act read with Rule 20 of the Haryana VAT Rules being ultra vires the Constitution of India and, in particular, Article 14 thereof, as according to the petitioner the conditions imposed by way of section 8(3) of the H V Act read with sub-Rule(1) and (4) of Rule 20 of Haryana VAT Rules were arbitrary, unreasonable and not sustainable in law.

(7) The Hon'ble Punjab and Haryana High Court on aforesaid writ held that the onus upon the petitioner assessee got discharged on production of the Form VAT C-4 which was required to be genuine and not thereafter to substantiate its truthfulness by collecting material for its authenticity. In other words, the genuineness of the certificate and declaration could be examined by the taxing authority, but onus could not be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. In view of the above, the Hon'ble High Court, however, pronounced that it could not be held that the

provisions of Section 8(3) of the Act and the sub-rules (1) and (4) of Rule 20 of the Rules were ultra vires but the same would be operative in the manner indicated above. Consequently, the writ petitions were partly allowed and cases were remanded to the assessing authority to pass fresh assessment order in accordance with law.

The Hon'ble High Court further decided that the authorities could examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer and the department was required to allow the claim once proper declaration was furnished and in the event of its falsity, the department could proceed against the defaulter.

It was pointed out that the sub section (3) of the section 8 of the HV Act envisaged a scheme of input tax that: "where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished to him in the prescribed form and manner by the selling dealer; and such authority shall allow the claim only if it is satisfied after making such inquiry as it may deem necessary that the particulars contained in the certificate produced before it are true and correct."

In this perspective, the Rule 20 of Haryana VAT Rules [Form of certificate by a selling VAT dealer under Section 8(3)] is reproduced as under:

(1)The certificate referred to in sub-section (3) of section 8 shall be in Form VAT-C4 and shall be furnished by the selling VAT dealer to the purchasing VAT dealer in respect of sale of taxable goods made by him to the purchasing dealer on tax invoice when the tax payable under the Act on such sale has been paid by him in full. The aforesaid rule

prescribed Form VAT C-4, a declaration, which was required to be furnished by the purchasing dealer at the time of filing the returns under the Act.

Mr. Ashok Hansaria, learned counsel, for the appellant dealer further contended that in the present context, ITC could not be denied to the appellant assessee since he had paid due tax to the seller of goods. He said that the appellant's case also found favour with a decision made in case of the State of Maharashtra V/s Suresh Trading Company in which the Hon'ble Supreme Court held that an act of purchaser could not be held liable to be made good by the seller and vice versa.

Arguing on behalf of the revenue Shri N.K. Baid, learned DGA, contested appellant's claim of ITC as not tenable in eyes of law, for the appellant effected purchases of goods on which the selling dealer had charged tax but had not deposited it in the State treasury. He said that the scheme of ITC incorporated in the section 18 of the Act was not at tandem with the ITC related corresponding section of the HV Act by reason of the former not having on statute a provision of certificate and a particular Form VAT- C4 required to be obtained from the selling dealer for production before the Assessing Authority in the Act. He said that the language of the construct as employed in the Haryana VAT Act was altogether different from the wording, mechanism and spirit of the Section 18(1) A to G of the Act dealing with Input Tax Credit. Hence, rejection of claim of the input tax credit by the Assessing Authority and denial of stay on the demand in dispute by the Appellate Authority.

The plea of the appellant's counsel that assessments be made of selling dealer levying additional tax to the extent of ITC amount charged from the appellant or in case it had already been taken into account in the assessment orders having earlier been passed, by recovering outstanding demand was opposed tooth and nail by learned counsel of

the Revenue who with vehemence contended that the appellant beat about the bush invoking assessment provisions of the Act to make good its loss incurred at the hands of defaulter selling dealer by passing buck on the shoulders of the relevant assessing authorities of the selling dealers in the Act.

He further argued that the aforesaid section 18 of the Act dealing with ITC was independent of the assessment provisions as enshrined under section 22,23, 24, 25 and 26 of the Act and its working could not be regulated by mischief of the aforesaid assessment provisions in favour of the appellant inasmuch as its claim of ITC was concerned. The VAT system is based on arresting the cascading effect of tax burden in series of sales and instrument of ITC has been fashioned in a way that each link of series actually pays tax only on value addition. Therefore, the selling dealer's outstanding tax cannot be a alibi source of credit of input tax for the appellant dealer.

He further argued that the case of M/s Suresh Trading Company was not appropriate to the facts of the case on hand and contentiously argued that any ITC available to any of the registered dealers in accordance with provisions of the Act was based on a single predicate that ITC would be allowed if the pre condition of ***the tax deposited on the basis of original VAT invoice within three months from the date of issuance of such invoice*** was achieved.

Heard both the counsel of the parties to the issue and perused record placed before us. We also went through the judgments of the Hon'ble Supreme Court and the Hon'ble Punjab and Haryana High Court cited supra.

At the outset, with regard to claim of input tax credit, it would be suffice to say the Act has got a statutory enactment distinguishable from its counter part in the HT Vat Act inasmuch as the construction of the

section 18 of the Act requires of the purchasing dealers production before the Assessing Authority only of the requisite VAT invoices issued by the selling dealers and is not encumbered with condition to obtain, apart from the requisite VAT invoices, any other documents to buttress claim for allowance of the ITC, as is mandatory in case of the registered dealers of Haryana claiming ITC by production, in addition to the requisite VAT invoice, a Form VAT C-4 in terms of Rule 20 of the Haryana VAT Rules along with a certificate from the selling dealers declaring therein that they had **paid** full amount of due tax realized on the sales effected with the purchasing dealers. But, no such injunction is laid down in the scheme of the RVAT Act as is evident from a plain regulatory mechanism of sub section (2) of Section 18 of the Act which herein is:

"(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."

Whereas scheme of input tax envisaged under sub section (3) of the section 8 of the HV Act inasmuch as ITC is concerned presents a quite different picture .

"where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished

to him in the prescribed form and manner by the selling dealer; and such authority shall allow the claim only if it is satisfied after making such inquiry as it may deem necessary that the particulars contained in the certificate produced before it are true and correct."

It is noticeable that sub Rules 2 & 4 of the Rule 20 of the Haryana VAT Rules also reflect a different pattern in the scheme of ITC grant which does not exist in the Act and RVAT Rules and which are as follows:

Sub rule (1) of rule 20 stipulates that prescribed certificate under Section 8 (3) of the VAT Act shall be in Form VAT C-4 to be supplied by the selling dealer to the purchasing VAT dealer relating to sale of taxable goods to the purchasing dealer provided the tax payable under the Act had been paid by him in full.

In this connection, it would be appropriate to go through Sub rule (4) of Rule 20 of the Haryana VAT Rules which postulates that the purchasing VAT dealer shall not be discharged of its liability in the event of failure to furnish the VAT C-4 certificate or furnishes a false certificate. However, wherever selling dealer later on pays tax due from him, in that eventuality the liability of the purchasing dealer shall stand abated. This shall entitle the purchasing dealer to seek refund of the tax collected from him within three years of finalization of his assessment. However, these provisions do not exist on the statute herein.

It is clear in the instant case that the allowance of claim of ITC under the Act is solely governed by the section 18 of the Act and it cannot be influenced by the assessment proceedings of the errant or tax defaulter dealers and undoubtedly is fiercely independent of the charging sections of the assessments provided in the Act in this regard.

Moreover, the facts of the aforesaid case of **M/s Suresh Trading Company** (supra) are distinguishable from those in the instant case. There the respondent petitioner having purchased goods from a registered dealer under the same Maharashtra Act and the bills given to it contained a certificate to the effect that the registration of the selling dealer was in force on the date of the sales and that way the genuineness of the transactions was not in doubt. The respondent petitioners thereafter resold within the State of Maharashtra goods purchased by them from the registered dealers and claimed to deduct from their turnover of sales for the relevant accounting year the resales of the goods so purchased from the registered dealers. In the aforesaid case the issue raised was with regard to denial of deductions claimed by the respondent dealer which actually had the effect of taxing transactions which were not otherwise taxable. The condition precedent for becoming entitled to make a tax free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax free sale accrued to it. The Hon'ble Apex Court, affirming the decision of the High Court that a purchasing dealer was entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it, observed that "thereafter to hold by reason of something that had happened subsequent to the date of purchase, namely, the cancellation of the selling dealers' registration with retrospective effect that the tax free resales had become liable to tax would be tantamount to levying tax on the resales with retrospective effect." A study of the facts of the aforesaid case (supra) revealed that the facts of the aforesaid case were distinguishable from those in the instant case and were not applicable here where a different sort of denial, i.e., of ITC was in place and denial

did not emanate from subjecting tax free resales to tax thereby taxing it retrospectively.

In the present context, ITC could not be allowed to the appellant assessee because the seller of goods had not deposited the tax in the government treasury on the basis of VAT invoices issued by him and ,and scheme of Section 18 from clause A to G thereof of the Act made law clear on the point that ITC was a right of the dealer who paid the tax for goods purchased as laid down in clause A to G of sub-section (1) of the Section 18 of the Act for business purposes herein, but only when the inevitable condition as expressed in the conjoining adjunct of the construct .i.e., sub section 2 of section 18 of the Act was achieved in the process of sale.

Section 18:- Input Tax Credit. – (1) Input tax credit shall be allowed to the registered dealers in respect of purchase of any taxable goods made within the State from a registered dealer

"(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."

Therefore, the controversy in the petition narrows down to, whether a purchasing dealer can be held liable for input tax which has been recovered from it by the registered selling dealer or its predecessors but not paid into the Government treasury. On analysis of the factual and legal matrix of the case in the foregoing account, it is held without deliberating on the merit of the aforesaid case that balance of convenience *prima facie* lies in favour of the respondent Revenue and

since the selling dealer was not found to have deposited due tax collected from the appellant buyer, it in the present case cannot not be allowed claim of ITC in terms of the scheme of input tax credit set out in the aforesaid section 18 of the Act .Hence, the stay application is rejected and the Appellate Authority is directed to dispose of the impugned appeal within three months from the date of order.

Order Pronounced.

(Sunil Sharma)
Member

(Rakesh Srivastava)
Chairman