

RAJASTHAN TAX BOARD, AJMER

1. Appeal No. 1074/2013 Bhilwara
2. Appeal No. 1315/2013 Bhilwara
3. Appeal No. 1316/2013 Bhilwara

M/s A Infrastructure Limited,
Hamirgarh Distt. Bhilwara

Appellant

Vs

The Commercial Taxes Officer,
Special Circle, Bhilwara

Respondent

DB

Shri Rakesh Srivastava, Chairman
Shri Sunil Sharma, Member

Present:-

Shri M.L. Patodi,
Advocate for Appellant

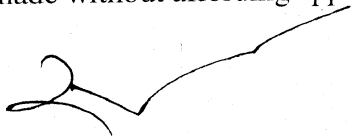
Shri R.K. Ajmera,
Deputy Government Advocate for Respondent

JUDGMENT**Dated: 22/02/2015**

1. The brief facts of the case are that the Appellant Company, M/S A.S. Infra Structure Ltd., Hamirgarh Distt. Bhilwara is registered in the State of Rajasthan with the Commercial Taxes Officer, Bhilwara, having TIN No. 08751002344, and engaged in manufacturing and selling AC pressure pipes and couplings (fittings) under Section 23/24 of the Rajasthan Value Added Tax Act (for short, "the Act") read with Section 9 of the Central Sales Tax Act, 1956 (for short, "the CST Act"). The assessment orders were passed by the Commercial Taxes Officer, Bhilwara (for short, "the Assessing Authority") for year 2008-09 (CST), 2010-11 (VAT), 2010-11(CST) dated 26/05/2010, dated 22/02/2013 and dated 22/02/2013 respectively wherein the Input Tax Credit for relevant periods was disallowed and interest thereon was imposed under Section 55 of the Act. Aggrieved, the Appellant filed appeals before the Deputy Commercial (Appeals), Bhilwara (for short, "the Appellate Authority") who, while confirming the aforesaid assessment orders of the Assessing Authority inasmuch as denying input tax credit, set aside the aforesaid appeals.

2. Against the impugned appellate orders, the appellant has come up in appeals u/s 83 of the Act before the division bench of the Rajasthan Tax Board (for short, "the Board").

3. Beginning the arguments on behalf of the Appellant Company Mr. M.L. Patodi, the learned Counsel said that the aforesaid assessment orders, were bad in law for the fact of having been made without affording appropriate opportunity of being heard to the appellant




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assesse. Besides, the Assessing Authority arbitrarily passed the above assessment orders without examining the facts of the case which, inter alia, mainly centred round the sales of AC pressure pipes manufactured by the appellant who was exempted from tax under Notification dated March 9, 2007 issued under section 8(2) of the Act.

4. Mr. M.L. Patodi, the learned counsel of the appellant assessee, argued that the Assessing Authority erroneously disallowed the input tax credit and the Appellate Authority confirmed the denial of the input tax credits to the appellant assessee in the aforesaid assessment orders on the basis of the decisions of the division bench of the Board made in the appellant's own case under caption of M/S Infra Structures Limited Vs Commercial Taxes, Bhilwara on November 23, 2011 wherein it was held that, *"the appellant company a manufacturer of A.C. Sheets, which has not charged VAT on their sales, is exempted from tax on sale of its manufacturing products, as per Notification, meaning thereby that not unit/institution is exempted from tax but the sales of its goods are exempt from tax, which squarely fall under definition of exempted goods. Therefore the A C sheets manufactured and sold by the appellate company are exempted goods and thus not eligible for availing I.T.C."*

5. Mr. M.L. Patodi, the learned counsel for the appellant, contended that the State Government having issued Notification no. F.12 (28) F.D./Tax/2007/136 dated March 9, 2001, under sub-section 3 of section 8 of the Act inserted entry no. 20 in Schedule-II to the Act, which is as follows:

S.No.20- Exemption Two Person of Class of Person - Manufacturing of Asbestos Cement Sheets and Bricks.

6. He said that a bare reading of the above Notification left no doubt as to its sole applicability on and for manufactures only. Since such asbestos cement sheets were subject to VAT with effect from March 9, 2007, only the manufacturers mentioned in the aforesaid Notification were accorded exemption from tax accordingly.

7. He further contested that scheme of section 18 of the Act allowed the assessee to claim input tax credit (for short, "ITC") on the manufacture of the taxable goods sold in the State or in the course of Inter-State Trade & Commerce. The commodity, asbestos cement sheets, was exigible to VAT with effect from March 9, 2007, therefore the assessee manufacturer could not have been denied its due ITC claim in respect of the VAT paid @ 12.5% raw material purchases and the goods manufactured therefrom were sold in the course of inter state sales @ 1% against 'C' forms and @ 12.5% without 'C' forms. He was vociferous that nowhere did section-18 of the RVAT Act rule out ITC on the raw materials purchased & used in the manufacturing of the taxable goods.



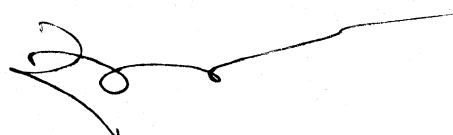

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8. Further elaborating his stand, Shri Patodi, said that by the impugned Notification dated 09-03-2007, sale of asbestos sheets was specifically exempted from tax by the government to the manufacturers of such goods: meaning asbestos sheets were, however, not exempted from tax for non-manufacturing dealers dealing in the same commodity, at the point of sale of these goods on the part of the letter. He also mentioned that product, asbestos cement sheets having content of fly ash more than 25% was earlier exempted from tax under Schedule-I to the Act listed at entry no. 68 thereof, which was later scrapped with effect from March 9, 2007, thereby exempting the sale of the impugned goods with stipulation of above specified conditions in the aforesaid exemption Notification of March 9, 2007 issued under Section 8 (3-A) of the VAT Act. The learned counsel for the appellant dwelt at length on the methodology of exemption from tax as enshrined in the scheme of Section 8 of the Act in respect of AC sheets, alongwith history of the relevant exemption notifications issued in this regard variously under the Rajasthan Sales Tax Act, 1994 and those issued under the Rajasthan Value Added Tax Act from time to time; being assertive that in terms of the aforesaid notification dated 09.03.2007 issued under Sub-section 3(A) of Section 8, the tail end 'manufacturers of Asbestos Cement Sheets and Bricks' selling these goods were exempted from tax, establishing that the 'A.C. Sheets' manufactured by the petitioner were 'exempted goods' confined to until their point of sale; as such, mandatory prerequisite for denying ITC under Section 18 of the Act was honest.

9. Per contra, Shri R.K. Ajmera, the learned Deputy Government Advocate for the respondent-State, submitted that vide notification, (S.O. 372) the manufacturers of A.C. Sheets and Bricks were included at S.No.20 in Schedule-II to the Act, entitling the units to claim exemption on the sale of aforesaid manufactured goods on the fulfillment of certain conditions and in view of specific provision of Section 18(1) (e) of the Act, ITC was rightly withheld as the goods manufactured were covered under the category of exempted goods.

10. Reliance was placed on Notification (S.O. 377) dated 09.03.2007 issued under Section 8 (3) of the Act to bring point home that AC Sheets clearly fell in the ambit of exempted goods in light of the definitions of 'exempted goods' and 'goods' delineated in sub-section (13) and sub-section (15) of section 2 of the Act respectively and irrespective of whether the Notification was issued under sub-section (1) or sub-section (3) of section 8, or sub-section (3A) or sub-section (4) of section 8 of the Act, the goods were apperelled in the definition of exempted goods consequently leading the Assessing Authority to withhold petitioner's claim of ITC thereon on legal basis; and in support of his averment, citing the judgment of the Hon'ble Rajasthan High Court in case of the ACTO v. Suncity Trade Agency reported in (2006) , 14 STC 405:

11. He read out the provisions of the Act relevant to the case on hand, which are as follows:




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"Section 2(13) "Exempted goods" means any goods exempted from tax in accordance with the provisions of this Act, which are as follows:

(15) "goods" means all kinds of movable property, whether tangible or intangible other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be served before sale or under the contract of sale;"

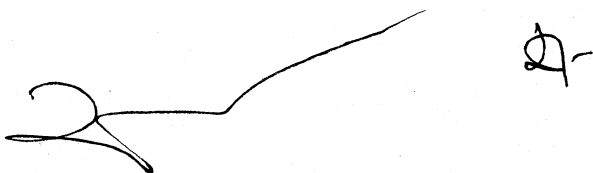
"Sec.-8. Exemption of tax:-

- (1) The goods specified in the Schedule-I shall be exempt from tax, subject to such conditions as may be specified therein.
- (2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-I, prospectively or retrospectively and thereupon the Schedule shall be deemed.
- (3) The State Government in the public interest by notification in the Official Gazette, may exempt whether prospectively or retrospectively from tax the sale or purchase by any person or class or persons as mentioned in Schedule-II without any condition or with such condition as may be specified in the notification.
- (3A) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-II, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.
- (4) The State Government may, if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this Act in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the notification.
- (5) Every notification issued under this section shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for a period of not less than 30 days, which may be comprised in one session or in two successive sessions and if before the expiry of the sessions in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such notification or resolves that any such notification should not be issued, such notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

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



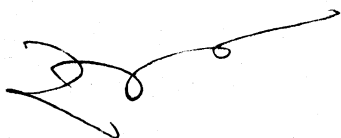
- (d) being used as packing material of goods, other than exempted goods, for sale or
- (e) being used -----those as may be notified by the State Government in the manufacture of goods other than exempted goods, for sale within the State or in the course of Inter-state trade or commerce; or

12. Discussing the aforesaid provisions, Shri R.K.Ajmera on behalf of the Revenue, contested that ITC was not allowable to the appellant assessee, for scheme of Section 8 of the Act, dealing with exemption of tax, revealed that while its sub-section (1) exempted goods specified in the Schedule-I, the sub-section (2) thereof provided for addition, omission, amendment, modification in Schedule-I to the Act. Likewise, sub-section (3) of section 8 of the Act envisaged exemption to any person or class of persons as mentioned in Schedule-II with ensuing sub-section (3A) providing for addition, omission, amendment and modification in Schedule-II to the Act. In similar vein, sub-section (4) of the Section 8 of the Act provided for exemption in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, simultaneously sub-section (5) of the Section 8 of the Act prescribing procedure for the grant of such exemption from tax. The section under reference also empowered the State Government to formulate conditions for grant of exemption from tax. As such, section 8 of the Act clearly specified three types of exemptions i.e. (i) goods specified in the Schedule-I, (ii) person or class of persons specified in Schedule-II and (iii) sales or purchases for promoting Special Economic Zones or Exports.

13. The learned advocate for the Revenue, Shri R.K. Ajmera, furthering the arguments, said that so far as allowance of ITC to the appellant assessee was concerned, it was permissible only under the section 18 of the Act in respect of purchases of only taxable goods effected within the State from a registered dealer to the extent and in the same manner as prescribed, inter alia, for the purpose of being used as raw material, except for those notified by the State Government in the manufacture of goods for sale within the State or in the course of Inter-state trade or commerce. However, if the manufactured goods were exempted, the input tax credit was not available in terms of clause (e) of sub-section (1) of Section 18 of the Act, which was the case in the present appeals.

14. However, the learned counsel for appellant, Shri M.L. Patodi, had contended that under Section 18(1) (e) of the Act, only the '**exempted goods**', had been taken out of the purview of ITC and not "**person or class of persons or sale or purchases for promoting Special Economic Zones or exports as envisaged under Section 8(3), Section (3A) or Section (4) of the Act**": the use of words 'other than exempted goods' necessarily implied the goods specified in the Schedule-I under Section 8(1) of the Act.

15. We have heard counsel for both the parties to the issue and after going through the judgments cited hereinabove on allowability of the ITC and the record placed before us, we



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proceed to decide the impugned issue of grant of ITC on the sale of Asbestos Cements Sheets by the appellant manufacturer. At the outset, it would be appropriate to take notice of the notifications having material bearing on the issue:

Notification dated 16.03.2005 under the Act of 1994:-

"S.No. 1874:F.4(78)FD/Tax/2004-168 Dated 16.03.2005

In exercise of the powers conferred by section 15 of the Rajasthan Sales Tax Act 1994 (Rajasthan Act No. 22 of 1995) and in supersession of this Department's Notification No. F.4/(68)FD/Tax-Div/99-271 (S. No. 1147), dated, January 24, 2000 (as amended from time to time), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from tax the sale of asbestos cement sheets and bricks, manufactured in the State by an industrial unit having fly ash as its main raw material on the following conditions, namely:

1. that such fly ash shall constitute twenty five percent or more in the contents by weight of such asbestos cement sheets and bricks; and
2. that such unit commences commercial production by 31/12/2006.

This notification shall remain in force upto 23.1.2010."

Notification dated 01.06.2006:-

"Notification

Jaipur, Dated : 01.06.2006

In exercise of the powers conferred by sub section (2) of section 8 of the Rajasthan Value Added Tax Act 2003 (Rajasthan Act No.4 of 2003) the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following further amendments is SCHEULE-I appended to the said Act; namely :-

AMENDMENTS

4. After the existing S.No.60 and before S.No. 61, the following new S.No. and entries thereto shall be inserted, namely :-
"60A.Asbestos cement Subject to the sheets and bricks condition of entry having contents of fly in Rajasthan ash 25% or more by Certificate of the weight selling dealer'

Notification dated 05.07.2006:-

"Notification

Jaipur, Dated : 05.07.2006

In exercise of the powers conferred by sub-section (2) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Act No.4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments in SCHEDULE-I appended to the said Act, namely :-

AMENDMENT

In Schedule-I appended to the said Act, the existing expression appearing in Column Noi.3 against S.No.60A, shall be substituted by the following expression, namely :-

- "(1) The goods shall be entered in the Registration Certificate of the selling dealer;
- (2) The exemption shall be for such goods, manufactured by the dealer who commences commercial production in the State by 31.12.2006.

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(3) The exemption shall be available up to 23.01.2010."

Notification dated 09.03.2007:- S.O. 371 :-

"Finance Department
(TAX DIVISION)
Notification

Jaipur, March 9, 2007

S.O. 371 :- In exercise of the powers conferred by sub-section (2) of section 8 of the Rajasthan Value the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments in SCHEDULE-I appended to the said Act, namely :-

AMENDMENTS

In Schedule-I appended to the said Act :-

- (1)
- (2) The existing S.No.60A and entries thereto, shall be deleted.
- (3)"

Notification dated 09.03.2007:- S.O. 372 :-

Finance Department
(TAX DIVISION)
Notification

Jaipur, March 9, 2007

S.O. 372:- In exercise of the powers conferred by sub- section (3A) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No.4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments in SCHEDULE-II appended to the said Act, namely :-

AMENDMENTS

In Schedule-II appended to the said Act :-

- (1)
- (2) After the existing S.No.18 and entries thereto the following new S. Nos. and entries thereto shall be added, namely :-
 19. Self Help Group
 20. Manufacturers of asbestos cement sheets and bricks.

Notification dated 09.03.2007:- S.O. 377 :-

"Finance Department
(TAX DIVISION)
Notification

Jaipur, March 9, 2007

S.O. 377 :- In exercise of the powers conferred by sub-section (3) of section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No.4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from payment of tax, the sale of asbestos cement sheets and bricks manufactures in the State having contents of fly ash twenty five percent or more by weight, on the following conditions namely :-

- (1) that the goods shall be entered in the registration certificate of the selling dealer;




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- (2) that the exemption shall be for such goods manufactured by the dealer who commenced commercial production in the State by 31.12.2006; and
- (3) that the exemption shall be available up to 23.10.2010."

16. A bare scanning of the notifications reproduced hereinbefore reveals that under the Act of 1994, the exemption granted was restricted to the sale of A.C. Sheets and Bricks subject to conditions laid out therein. Under the RVAT Act, 2003, vide notification dated 01.06.2006, exercising powers under Section 8(2) of the Act, the government amended Schedule-I to the Act in respect of A C sheets and bricks having contents of fly ash 25% more by weight by inserting entry no. 60A therein; thereafter, on July 05, 2006, by another notification issued under Section 8(2) of the Act, the entry 60A of the Schedule-I to the Act was scrapped.

17. The learned counsel for the appellant assessee, Mr. M.L.Patodi during the course of arguments, relied on the decision dated 19-12-2013 in SB Civil (VAT) Revision (petition No. 7/2012) of the Hon'ble Rajasthan High Court made in case of the appellant company on the same issues as raised in the present appeals before us holding, inter alia, that on March 09, 2007, three notifications were issued dealing with A.C. Sheets, whereby, by 'Notification dt. March 9, 2007' S.O. 371, issued under Section 8 (2) of the Act, the existing entry 60A was deleted from Schedule-I, and by S.O. 372 (supra) issued under Section 8 (3A) of the Act, 'manufacturers of Asbestos Cement Sheets and Bricks' were added in Schedule-II and thirdly by S.O. 377 issued under Section 8(3) of the Act, conditions for availing exemption for sale of A.C. Sheets and Bricks manufactured in the State were spelt out.

18. "From the above, it is apparent that the notifications dated 16.03.2005 issued under Rajasthan Sales Tax Act of 1994 and Notifications dated 16.02.2006 and dated 05.07.2006 issued under the Act, 'A.C. Sheets and Bricks' were taken out of purview by Notification dated 09.03.2007, S.O. 371, (supra) and the manufacturers of A.C. Sheets and Bricks were exempted by Notification dated 09.03.2007" of Schedule-II to the Act, S.O. 372, (supra) and the conditions for availing such exemption by the manufacturers were put in place by the third Notification, even dated 09.03.2007 (S.O. 377).

19. "It is significant that while aforesaid Notification S.O. 371 has been issued under Section 8 (2) of the Act, other two Notifications, S.O. 372, and, S.O. 377, have been issued under section 8 (3A) and Section 8 (3) of the Act respectively, which provisions, as notified hereinbefore, deal with Schedule-I under Section 8 (2) of the Act and Schedule-II under Sections 8(3) of the Act and (3A) of the Act, which in turn relates to exemption of goods and exemption of persons respectively, therefore, it is clear from the notifications issued on 09.03.2007 that the intention of the State was to exempt the manufacturers of A.C. Sheets and Bricks subject to fulfillment of conditions as laid




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down in S.O. 377 and to take away exemption available to A.C. Sheets and bricks as goods, as was available before the said date on account of its inclusion in Schedule-I."

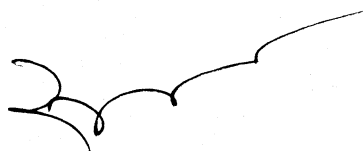
20. "The submissions of learned counsel for the respondent that the language and purport of S.O. 377 clearly indicates that A.C. Sheets and Bricks manufactured in the State having contents of fly ash 25% or more have been exempted and it was the goods as envisaged by Section 18(1) (e) which were exempted and, therefore, the Board was justified in dismissing the appeals filed by the petitioner can not be accepted for more than one reason; firstly, the notification S.O.377 has been issued under Section 8(3) of the Act, which does not amend Schedule-I to include the said very specific in terms and issued under Section 8(2), takes out the goods A.C. Sheets and Bricks from Schedule-I could not be ignored so as to treat S.O. 377 having the effect of exempting the goods and not prescribing the conditions for exemption of manufacturers of A.C. Sheets; which have been included in Schedule-II on the same day by S.O. 372; thirdly, the notification S.O. 377 could not be read in isolation to the exclusion of the other notifications issued on the same day and on a harmonized construction of the three notifications leads to the irresistible conclusion noted above."

21. The Hon'ble Raj. High Court further observed in the case referred to Supra that:

"communication dated 26.04.2008 construing the notifications dated 09.03.2007 can be used as contemporanea exposito. Hon'ble Supreme Court in Collector of Central Excise, Guntur v. Andhra Sugar Ltd., : AIR 1989 SC 625 while dealing with an exemption notification under the Central Excise and Salt Act, 1944 observed and held as under:-

"5 It is well settled that the meaning ascribed by the authority issuing the Notification is a good guide of a contemporaneous exposition of the position of law. Reference may be made to the observations of this Court in K.P. Varghese v. Income-tax Officer, Ernakulam, (1982) 1 SCR 629 : (AIR 1981 SC 1922). It is a well settled principle of interpretation that Courts in construing a Statute will give much weight to the interpretation put upon it at the time of the enactment and since, by those whose duty has been to construe, execute and apply the same enactment."

22. "So far as the judgment of this Court in the case of Suncity Trade Agency (supra) is concerned, the said judgment dealt with a situation wherein by exemption notification stainless steel fats, ingots and billets were exempted from tax on the conditions indicated in the notification and this Court came to the conclusion that merely because the exemption was conditional or is given subject to fulfillment of certain conditions, it does not mean that such goods will fall outside the definition of exempted goods. The said judgment apparently has no application to the facts of the case. The term defined under Section 2(13) of the Act also deals with exempted goods and not with exemption of person or class of persons as indicated in Section 8(3) of the Act."




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23. "The intention of the legislature in incorporating Section 18 (1) (e) of the Act is also apparently clear, which takes away the exempted goods from the purview of ITC and not the person or class of persons exempt under Section 8(3) as nothing prevented the legislature from including besides exempted goods, exempted persons also under Section 18(1) (e) of the Act. The fact that goods and dealers are treated separately is also evident from provisions of Section 5 of the Act."

24. "If the persons included in Schedule-II were not entitled to claim ITC, there was no reason to include the said conditions for the above noted persons. Apparently, it is the sale of goods made by person or persons included in Schedule-II, which is exempt and not the goods manufactured by them, whereas, for denying ITC, the requirement is that of 'exempted goods."

25. **"In view of what has been considered above, it is apparent that in the present case in view of express language of Section 18(1) (e) of the Act, notifications S.O. 371 and S.O. 372 read with S.O. 377, the petitioner who is manufacturer of A.C. Sheets is entitled to avail ITC and the authorities below were not justified in denying Input Tax Credit to the petitioner based on interpretation put by them to inclusion of the petitioner in Schedule-II under Section 8(3A) and notification S.O. 377 dated 09.03.2007 issued under Section 8(3) of the Act"**.

26. The Hon'ble Raj. High Court in another case of the same appellant company, i.e., M/S A. Infrastructure Limited, Bhilwara Vs Deputy Commissioner (Appeals) Special Circle, Bhilwara in SB Civil Writ Petition No. 2517/2013, dated 21.01.2014, confirmed the verdict of the co-ordinate Bench of the Hon'ble High Court while deciding the revision petitions and construing the intention of legislature for incorporating Section 18(1) (e) of the Act 2003 and made the following observations in this regard, which are as follows:

"The intention of the legislature in incorporating Section 18(1) (e) of the Act is also apparently clear, which takes away the exempted goods from the purview of ITC and not the person or class of persons exempt under Section 8 (3) as nothing prevented the legislature from including besides exempted persons also under Section 18(1) (e) of the Act. The fact that goods and dealers are treated separately is also evident from provisions of Section 5 of the Act."

"The aspect that those included in Schedule -II are entitled for ITC is also fortified from the fact that in the conditions indicated for exemption of Self Help Groups and those, who have been registered with the Khadi and Village Industries, Commission or Rajasthan Khadi and Village Industries Board by the notifications D.O. 376 and SO. 378 issued on the same date i.e. 09.03.2007 a specific stipulation has been made in the notifications issued under Section 8(3) of the Act as under:-

"No input tax credit shall be claimed by such dealers in respect of purchase of raw materials used for manufacture of aforesaid goods."

If the persons included in Schedule-II were not entitled to claim ITC, there was no reason to include the said conditions for the above noted persons. Apparently, it is the sale of goods Schedule-II, which is exempt and not the goods

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manufactured by them, whereas, for denying ITC, the requirement is that of exempted goods'.

27. In view of what has been considered above, it is apparent that in the present case in view of express language of Section 18(1) (e) of the Act, notifications S.O. 371 and S.O. 372 read with S.O. 377, the petitioner who is manufacturer of A.C. Sheets is entitled to avail ITC and the authorities below were not justified in denying Input Tax Credit to the petitioner based on interpretation put by them to inclusion of the petitioner in Schedule-II under Section 8 (3A) and notification S.O. 377 dated 09.03.2007 issued under Section 8(3) of the Act."

28. Thus the issue of entitlement of ITC to the manufacturers of asbestos cement sheets has been adjudicated in the aforesaid judgements of the Hon'ble Rajasthan High Court (supra) in favour of the appellant assessee and the present set of appeals is covered under them. In view of the above, the appeals of the appellant assessee are accepted and the impugned orders of the Appellate Authority and the assessment orders on question of the disallowance of ITC and imposition of the attendant interest, if any, thereon passed by the Assessing Authority are set aside. The appellant manufacturer is entitled to ITC for the relevant periods under dispute in keeping with the principles enunciated in above judgements of the Hon'ble Rajasthan High Court (supra).

Order Pronounced.


(Sunil Sharma)
Member


(Rakesh Srivastava)
Chairman