राजस्थान कर बोर्ड, अजमेर

1. अपील संख्या – 1238/2007/जयपुर.

मैसर्स ग्रिण्डवैल नोर्टन लिमिटेड, अजमेर रोड़, जयपुर. .....अपीलार्थी.

बनाम

1. उपायुक्त (अपील्स), द्वितीय, जयपुर.
2. सहायक आयुक्त, विशेष वृत्त–प्रथम, जयपुर. .....प्रत्यर्थी.

2. अपील संख्या – 1554/2007/जयपुर.

सहायक वाणिज्यिक कर अधिकारी,
वार्ड–प्रथम, भिवाड़ी. .....अपीलार्थी.

बनाम

मैसर्स ग्रिण्डवैल नोर्टन लिमिटेड, अजमेर रोड़, जयपुर. .....प्रत्यर्थी.

खण्डपीठ
श्री खेमराज, अध्यक्ष
श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री अलकेश शर्मा, अभिभाषक .....व्यवहारी की ओर से.
श्री रामकरण सिंह,
उप–राजकीय अभिभाषक .....विभाग की ओर से.

निर्णय दिनांक : 20/10/2016

निर्णय

1. ये दोनों अपीलें उपायुक्त (अपील्स) द्वितीय, वाणिज्यिक कर विभाग, जयपुर (जिसे आगे **'अपीलीय अधिकारी'** कहा जायेगा) के अपील संख्या 379/अपील्स–II/आरएसटी/जयपुर/बी/1999–00 में पारित किये गये आदेश दिनांक 16.04.2007 के विरूद्ध राजस्थान विक्रय कर अधिनियम 1994 (जिसे आगे **'अधिनियम'** कहा जायेगा) की धारा 85 के तहत प्रस्तुत की गयी हैं। अपीलीय अधिकारी ने उक्त आदेश से सहायक आयुक्त, वाणिज्यिक कर, विशेष वृत्त–प्रथम, जयपुर (जिसे आगे **'कर निर्धारण अधिकारी'** कहा जायेगा) के अधिनियम की धारा 29 के तहत पारित किये गये आदेश दिनांक 30.09.1999 से आरोपित कर राशि रूपये 3,80,628/–, धारा 65 में शास्ति रूपये 7,61,256/–, धारा 61 के तहत शास्ति रूपये 260/– व रूपये 620/– एवं धारा 58 के तहत ब्याज रूपये 1,75,089/– व रूपये 5,753/– के विरूद्ध प्रस्तुत अपील को आंशिक रूप से स्वीकार करते हुए, अन्तर कर रूपये 3,80,628/–, शास्ति रूपये 7,61,256/–, रूपये 880/– एवं ब्याज रूपये 5753/– को यथावत रखते हुए, ब्याज रूपये 1,75,089/– को अपास्त किया है। अतः पुष्टि किये गये अन्तर कर रूपये 3,80,628/–, शास्ति रूपये 7,61,256/–, रूपये 880/– एवं ब्याज रूपये 5753/– के सम्बन्ध में अपीलार्थी व्यवहारी द्वारा अपील संख्या 1238/2007 एवं अपास्त किये गये ब्याज रूपये 1,75,089/– के सम्बन्ध में अपीलार्थी विभाग द्वारा अपील संख्या 1554/2007 प्रस्तुत की गयी है।

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2. ये दोनों अपीलें एक ही पक्षकार से सम्बन्धित होने तथा अपीलीय अधिकारी के एक ही आदेश के विरूद्ध प्रस्तुत किये जाने से दोनों अपीलों का निस्तारण एक ही निर्णय से किया जाकर निर्णय की प्रति प्रत्येक पत्रावली पर पृथक–पृथक रखी जा रही है।

3. प्रकरण के संक्षेप में तथ्य इस प्रकार हैं कि आलौच्य अवधि की त्रैमासिक तृतीय व चतुर्थ बिक्री विवरण प्रपत्र क्रमशः 6 व 20 दिवस विलम्ब से पेश करने के कारण, कर निर्धारण अधिकारी ने अधिनियम की धारा 61 के तहत शास्ति रूपये 260/– आरोपित की है। अपीलार्थी व्यवहारी द्वारा आलौच्य अवधि का वार्षिक विवरणी 'एस.टी.5ए' 62 दिवस विलम्ब से पेश करने के कारण, कर निर्धारण अधिकारी ने अधिनियम की धारा 61 के तहत शास्ति रूपये 620/– आरोपित की है। व्यवहारी द्वारा आलौच्य अवधि का मासिक कर कुछ दिवस विलम्ब से जमा कराने के कारण, अधिनियम की धारा 58 के तहत ब्याज रूपये 5,753/– आरोपित किया गया है। इसके अतिरिक्त अपीलार्थी व्यवहारी द्वारा आलौच्य अवधि में रूपये 95,15,699/– का विक्रय 'ग्राइडिंग व्हील्स' का 8 प्रतिशत की दर से दर्शाया है, जबकि 'ग्राइडिंग व्हील्स' सामान्य कर दर 12 प्रतिशत से कर योग्य होना अवधारित कर, लायक कर निर्धारण अधिकारी ने उक्त 'ग्राइडिंग व्हील्स' की बिक्री पर सामान्य कर दर 12 प्रतिशत से कर योग्य मानते हुये, 4 प्रतिशत से अतिरिक्त कर व ब्याज तथा धारा 65 के तहत शास्ति आरोपित करने हेतु नोटिस जारी किया। नोटिस की पालना में अपीलार्थी व्यवहारी की ओर से कोई उपस्थित नहीं हुआ। अतः कर निर्धारण अधिकारी ने यह अवधारित किया कि इस सम्बन्ध में व्यवहारी को कुछ नहीं कहना है। लिहाजा, कर निर्धारण अधिकारी ने उक्त घोषित विक्रय पर 4 प्रतिशत से अतिरिक्त अन्तर कर रूपये 3,80,628/– आरोपित करते हुए, अधिनियम की धारा 58 के तहत ब्याज रूपये 1,75,089/– आरोपित किया है एवं करापवंचन का अपराध अवधारित कर, अधिनियम की धारा 65 के तहत शास्ति रूपये 7,61,256/– आरोपित की है।

4. अपील संख्या 1238/2007 में विद्वान अभिभाषक अपीलार्थी ने बहस में कथन किया कि अपीलीय अधिकारी का आदेश त्रुटिपूर्ण एवं अविधिक है। बहस में निम्नानुसार अपना पक्ष प्रस्तुत किया :–

The learned Deputy Commissioner (Appeals) II, Commercial Taxes, Jaipur has grossly erred in passing the impugned order and in upholding the levy of differential tax of Rs. 3,80,628/- on sales of grinding wheels of Rs. 95,15,699/- absolutely in an arbitrary and illegal manner. They submit that vide Notification No. F.4(1) FD/Tax Divn/97-101 dated 12.03.1997 issued

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by the state Government under section 4 of the Rajasthan Sales Tax Act superseding its earlier notification, vide entry No. 72 it had provided 8 percent rate of tax on all kinds of hardware and welding electrodes including welding rods. It is further submitted that earlier vide Notification No. F.4(11)FD/Gr.IV/95-49 dated 27.03.1995 issued by the State Government under section 5 of the Rajasthan Sales Tax Act, 1994 vide entry No. 66 hardware of iron steel and welding electrodes including welding rods were subjected to tax at the rate of 6 percent but as stated above the scope of hardware have been enlarged by the State Government vide aforesaid Notification dated 12.03.1997 by including "all kinds of hardware" vide entry No. 72. As such, with effect from 12.03.1997 the appellants had started charging and paying RST on intra state sales of hardware including the grinding wheels which are included in the term "hardware" at the rate of 8 percent. It is further submitted that while passing the assessment order for the assessment year 1996-97 on 21.01.1999 their the then assessing authority has assessed the sales of grinding wheels treating the same as included in the term "hardware" at the rate of 8 percent. They submit that the appellants had therefore, collected and paid tax on aforesaid sales of grinding wheels of Rs. 95,15,699/- at the rate of 8 percent.

We shall now take up the above points one by one. Taking the second point first, we find that the entry No. 72 in the Notification dated 12.03.1997 relates to "all kinds of hardware and welding electrodes and welding rods". It is true that the term grinding wheels has not been defined anywhere either in the Act, Rules or any Notification issued by the State Government and therefore, following the principles laid down by their Lordships in the case reported in 46 STC 256, we venture to determine the meaning of the expressions or words used in the entry No. 72. Although it may be true that the grinding wheels are graded by those who generally deal in the hardware goods, but this by itself may not conclusively determine the real nature of these goods i.e. grinding wheels. The term 'hardware' has been defined in the websters New World Dictionary to mean 'articles made of metal, as tools, nails, fittings, utensils etc.' As against this, the term 'machine' has been defined to mean 'structure consisting of a frame work and various fixed and moving parts for doing some kind of work. Similarly, the term 'machinery' has also been defined as 'machines collectively: the working parts of a machine, any means by which something is kept in action or a desired result is obtained'. The dictionary further defines the term 'fitting' to mean to be suitable or function etc. The term 'component' is defined to mean 'serving as one of the parts of a whole" an element or ingredient'. The term 'element' has also been defined to mean component part or quality often one that is basic and essential'. In the context of the meaning provided to the above terms, we are led to believe

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that the term 'hardware' is a very broad term encompassing within its fold a large number of articles made of hardmetal for various kinds of uses. In this view of the matter, while determining the correct nature of an article made of hard metal, one must bear in mind the likely use to which such an article could be put and the purpose to which it is best suited. Viewing this way, we understand that the articles made of metal can be broadly classified into two categories viz. (i) the articles which are designed to be used as the components or parts of any machine, for a single or any other well defined purpose, like spare parts of a machine, components or essential parts without which the machine as a whole does not become functional to obtain the desired result, and (ii) the articles which are designed and made for being independently used on its own for a common purpose which could be even more than one i.e. tools, utensils, etc. Although both kinds of articles aforesaid, are made of metal, but while the first category of articles are capable of being adapted to suit some purpose or function, the articles falling in the second category are capable of being used independently without being essentially required to form part of any structure to make it functional. Grinding wheels are of course made of hard metal but the same appear to have been designed for being used in the grinding machines to keep it functional for obtaining the desired result. This being so, we are of the view that such an article which is not capable of being used independently for any common purpose like tools, utensils etc. need to be distinguished from the articles made of metal course but meant to be used as a component or element for a well defined purpose. In this view of the matter, **we find that the grinding wheels traded in the market having acquired a special significance of its own need to be distinguished from general items of hardware as is understood in the common parlance.** Both the trade and the consumers do understand what a component or spare part of a machine stands for. Simply because the items of the nature referred to above are sold in the market by the general marchants of hardware surely does not take away its specific identity in the market and amongst its consumers. In the light of above discussions, we find nothing wrong on the part of theAA when he took the sale of grinding wheels as not covered by entry No. 72 and levied tax thereon at the general rate i.e. 12%".

The appellants respectfully submit that the Hon'ble D.B. of this Hon'ble Tax Board was convinced that the grinding wheels have acquired a special significance of its own need to be distinguished from general item of hardware as understood in common parlance but nevertheless they are included in the term 'hardware'. Since item No. 72 of the the Notification No. F.4(1) FD/Tax Divn./97-101 dated 12.03.1997 has notified rate of tax at the rate of 8 percent on **all kinds of hardware and welding electrodes including welding rods** and as item No. 66 of the Notification No. F.4(11) FD/Gr.IV/95-49 dated 27.03.1999 had provided 6 percent rate of tax on hardware of iron steel and welding electrodes including welding rods which

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has since been interpreted by the Hon'ble Board as the assessment year in that case was 1996-97. Therefore, in wiew of the extended concept of all kinds of hardware in entry No. 72 of Notification dated 12.03.1997 the goods in question being special type of hardware goods are duly covered under entry No. 72 of Notification dated 12.03.1997. The learned Deputy Commissioner (Appeals) II has therefore, grossly erred in not appreciating the aforesaid submissions. The differential rate of tax of Rs. 3,80,628/- on Rs. 95,15,699/- is serse arbitrary, illegal, improper and bad in law.

5. अपीलार्थी की ओर से विद्वान अभिभाषक ने निम्न न्यायिक दृष्टान्त प्रस्तुत किये :—

A. **वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन जोधपुर बनाम मैसर्स समृद्धि इण्डट्रीज, जोधपुर निर्णय दिनांक 06.04.2015 न्यायिक दृष्टान्त (2015) 12 आर.जी.एस.टी.आर. 304 (राजस्थान उच्च न्यायालय)**

B. **श्री कृष्णा इलेक्ट्रीकल्स बनाम तामिलनाडू राज्य न्यायिक दृष्टान्त (2009) 23 वीएसटी 249 (उच्चतम न्यायालय)**

C. **वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, राजस्थान—प्रथम, बनाम मैसर्स गोदरेज जी.ई. अप्लाईन्सेज, टोक रोड़, जयपुर निर्णय दिनांक 30.03. 2011 न्यायिक दृष्टान्त 30 टैक्स अपडेट पृष्ठ 68 (राजस्थान उच्च न्यायालय)**

बहस के अन्त में अपीलार्थी के विद्वान अभिभाषक द्वारा अपील स्वीकार करने की प्रार्थना की गई।

6. प्रत्यर्थी विभाग की ओर से विद्वान उप—राजकीय अभिभाषक ने अपीलीय अधिकारी के आदेश का समर्थन किया।

7. उभयपक्षों की बहस पर मनन किया गया व पत्रावली का अवलोकन किया गया। पत्रावली के अवलोकन से स्पष्ट है कि अपीलार्थी व्यवहारी के मामले में ही ग्राइडिंग व्हील्स पर कर दर क्या होगी, इस सम्बन्ध में राजस्थान कर बोर्ड की माननीय खण्डपीठ द्वारा **अपील संख्या 1400/01/जयपुर के मामले में निर्णय दिनांक 14.05.2002** के द्वारा विवाद निर्णित किया गया है। निर्णय का पैरा संख्या 9 निम्न प्रकार है :—

> "9. We shall now take up the above points one by one. Taking up the second point first, we find that the entry No.72 in the notification dated 12.03.1997 relates to "all kinds of hardware and welding electrodes and welding rods". It is true that the term grinding wheels has not been defined anywhere either in the Act, Rules or any notification issued by the State Government and therefore following the principles laid down by their Lordships in the case reported in 46 STC 256, we venture to determine the meaning of the expressions or

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words used in the entry No.72. Although it may be true that the grinding wheels are traded by those who generally deal in the hardware goods, but this by itself may not conclusively determine the real nature of these goods i.e. grinding wheels. The term 'hardware' has been defined in the Websters New World Dictionary to mean 'articles made of metal, as tools, nails, fittings, utensils etc'. As against this, the term 'machine' has been defined to mean 'structure consisting of a framework and various fixed and moving parts for doing some kind of work'. Similarly, the term 'machinery' has also been defined as 'machines collectively, the working parts of a machine; any means by which something is kept in action or a desired result is obtained'. The dictionary further defines the term 'fitting' to mean 'to be suitable or adapted, qualified or suited for some purpose, function etc'. The term 'component' is defined to mean 'serving as one of the parts of a whole; an element or ingredient'. The term 'element' has also been defined to mean 'component part or quality often one that is basic and essential'. In the context of the meaning provided to the above terms, we are led to believe that the term 'hardware' is a very broad term encompassing within its fold a large number of articles made of hard metal for various kinds of uses. In this view of the matter, while determining the correct nature of an article made of hard metal, one must bear in mind the likely use to which such an article could be put and the purpose to which it is best suited. Viewing this way, we understand that the articles made of metal can be broadly classified into two categories viz.(i) the articles which are designed to be used as the components or parts of any machine, for a single or any other well defined purpose, like spare parts of a machine, components or essential parts without which the machine as a whole does not become functional to obtain the desired result, and (ii) the articles which are designed and made for being independently used on its own for a common purpose which could be even more than one i.e. tools, utensils etc. Although both kinds of articles aforesaid, are made of metal, but while the first category of articles are capable of being adapted to suit some purpose or function, the articles falling in the second category are capable of being used independently without being essentially required to form part of any structure to make it functional. Grinding wheels are of course made of hard metal but the same appear to have been designed for being used in the grinding machines to keep it functional for obtaining the desired result. This being so, we are of the view that such an article which is not capable of being used independently for any common purpose like tools, utensils etc needs to be distinguished from the articles made of metal of course but meant to be used as a component or element for a well

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defined purpose. In this view of the matter, we find that the grinding wheels traded in the market having acquired a special significance of its own need to be distinguished from general items of hardware as is understood in the common parlance. Both the trade and the consumers do understand what a component of spare part of a machine stands for. Simply because the items of the nature referred to above are sold in the market by the general merchants of hardware surely does not take away its specific identity in the market and amongst its consumers. In the light of above discussion, we find nothing wrong on the part of the AA when he took the sale of grinding wheels as not a covered by entry No. 72 and levied tax thereon at the general rate i.e. 12%."

8. अपीलार्थी विद्वान अभिभाषक द्वारा उद्धरित माननीय खण्डपीठ का निर्णय कर निर्धारण वर्ष 1996–97 से सम्बन्धित है, जो अधिसूचना क्रमांक 97–101 दिनांक 12.03.1997 की विवेचना के साथ किया गया है जो कर निर्धारण वर्ष 1997–98 के लिये समान रूप से लागू होता है।

9. शास्ति के बिन्दु पर अपीलीय अधिकारी ने अपील अस्वीकार की है, जिसके लिये यह उल्लेख किया है कि वर्ष 1996–97 के संबंध में राजस्थान कर बोर्ड के समक्ष धारा 65 के तहत शास्ति का बिन्दु विवादित ही नहीं था। हस्तगत प्रकरण में यह निर्विवादित है कि अपीलार्थी व्यवहारी के समस्त संव्यवहार लेखा–पुस्तकों में इंद्राजित है। कोई भी संव्यवहार लेखा–पुस्तकों एवं बिक्री विवरण प्रपत्रों से छिपाया जाना पत्रावली से प्रमाणित नहीं होता है। इस सम्बन्ध में माननीय उच्चतम न्यायालय ने **श्रीकृष्णा इलक्ट्रिकल्स (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 :–

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"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."

10. 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।

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11. अतः प्रस्तुत प्रकरण में भी अपीलार्थी व्यवहारी द्वारा समस्त संव्यवहार का इन्द्राज लेखा–पुस्तकों में किये जाने के आधार पर, धारा 65 के तहत शास्ति का आरोपण किया जाना न्यायोचित नहीं माना जा सकता। अपीलीय अधिकारी द्वारा अधिनियम की धारा 65 के तहत आरोपित शास्ति की पुष्टि किया जाना न्यायोचित एवं विधिसम्मत नहीं है।

12. उपरोक्त विवेचन के मद्देनजर अपीलार्थी व्यवहारी द्वारा प्रस्तुत अपील संख्या 1238/2007 आंशिक रूप से स्वीकार करते हुए, आरोपित कर के बिन्दु पर अस्वीकार की जाती है तथा अधिनियम की धारा 65 के तहत आरोपित शास्ति अपास्त करते हुए इस बिन्दु पर अपील स्वीकार की जाती है।

13. अपीलार्थी विभाग द्वारा ब्याज के बिन्दु पर प्रस्तुत की गयी अपील संख्या 1554/2007, माननीय खण्डपीठ के निर्णय के प्रकाश में अस्वीकार की जाती है।

14. उपरोक्त तथ्यात्मक एवं विधिक विवेचना के पश्चात निष्कर्षित करते हुए अपील संख्या 1238/2007 को आंशिक स्वीकार किया जाता है तथा अपील संख्या 1554/2007 को अस्वीकार किया जाता है।

15. निर्णय सुनाया गया।

20/10/2016

(मनोहर पुरी)
सदस्य

(खेमराज)
अध्यक्ष