राजस्थान कर बोर्ड, अजमेर

अपील संख्या – 1827/2014/जयपुर

सहायक आयुक्त, वाणिज्यिक कर विभाग
विशेष–वृत, षष्ठम्, जयपुर। .....अपीलार्थी

बनाम

मैसर्स मोहनलाल एण्ड कम्पनी,
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एकलपीठ
श्री मदन लाल–सदस्य

उपस्थित : :

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निर्णय दिनांक :– 06.06.2016

1. अपीलार्थी–विभाग द्वारा यह अपील अपीलीय प्राधिकारी, तृतीय वाणिज्यिक कर, जयपुर (जिसे आगे **"अपीलीय अधिकारी"** कहा जायेगा) के द्वारा अपील संख्या 135/अ.प्रा.–III/वैट/जयपुर/2013–14/एफ में पारित आदेश दिनांक 19.05.2014 के विरूद्ध प्रस्तुत की गयी है, ज़िसके माध्यम से उन्होंने सहायक आयुक्त वाणिज्यिक कर विभाग, विशेष–वृत षष्ठम्, जयपुर (जिसे आगे **"सशक्त अधिकारी"** कहा जायेगा) द्वारा राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 (जिसे आगे **"अधिनियम"** कहा जायेगा) की धारा 23, 55 सपठित नियम 19ए के तहत पारित आदेश दिनांक 18.03.2013 के अन्तर्गत कायम मांग राशि रुपये 29,343/– में से राशि रुपये 29,100/– को अपास्त किया है।

2. प्रकरण के तथ्य संक्षेप में इस प्रकार है कि सशक्त अधिकारी द्वारा वर्ष 2010–11 में वार्षिक बिक्री प्रपत्र 10ए दिनांक 27.12.2011 को मेन्यूअली पेश किए जाने के कारण यह मानते हुए कि व्यवसायी की जिम्मेदारी ई–रिर्टनिंग फाइलिंग की थी, उस पर विलम्ब शुल्क रुपये 29,100/– आरोपित किया है। उक्त आदेश से व्यथित होकर अपीलीय अधिकारी के समक्ष अपील प्रस्तुत करने पर अपीलीय अधिकारी द्वारा आरोपित मांग को अपास्त करते हुए व्यवहारी की अपील स्वीकार की, जिससे व्यथित होकर विभाग द्वारा यह अपील प्रस्तुत की गयी है।

3. उभयपक्षों की बहस सुनी गई।

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4. अपीलार्थी–विभाग के विद्वान उप राजकीय अधिवक्ता ने अपीलीय अधिकारी द्वारा पारित आदेश को विधि विरूद्ध बतलाया एवं सशक्त अधिकारी द्वारा पारित आदेश का समर्थन करते हुए उन्होंने विभाग द्वारा प्रस्तुत अपील को स्वीकार करने का निवेदन किया।

5. प्रत्यर्थी के विद्वान अधिवक्ता ने अपीलीय अधिकारी के आदेश का समर्थन किया। प्रत्यर्थी के अभिभाषक ने कथन किया कि अधिनियम के तहत विहित नियम 19 में किया गया संशोधन दिनांक 01.04.2011 से लागू किया गया है तथा व्यवसायी की वार्षिक बिक्री प्रपत्र वैट 10ए पेश करने की समय सीमा बढ़ाकर दिनांक 30.04.2012 की दी गई थी जबकि उनके द्वारा बिक्री प्रपत्र दिनांक 27.11.2011 को ही समयावधि में ही प्रस्तुत कर दिये थे। अतः अपीलार्थी अभिभाषक ने सशक्त अधिकारी द्वारा, आरोपित विलम्ब शुल्क को निरस्त किये जाने के अपीलीय अधिकारी के आदेश की पुष्टि करते हुए विभाग द्वारा प्रस्तुत अपील को खारिज करने का निवेदन किया।

6. उभय पक्ष की बहस पर मनन किया गया एवं पत्रावली का अवलोकन किया गया। यह निर्विवादित है कि प्रत्यर्थी व्यवहारी द्वारा दिनांक 27.11.2011 बिक्री प्रपत्र प्रस्तुत कर दी गई थी। राजस्थान मूल्य परिवर्धित नियम 2005 के नियम 19 (जिसको आगे "**नियम**" कहा जायेगा) में दिनांक 19.03.2011 के संशोधन से पूर्व दिनांक 09.03.2010 से उक्त नियम निम्न प्रकार से अस्तित्व में था :–

नियम 19(1) **" The return referred to in sub-section (1) of section 21 of the Act, shall be submitted by a dealer in Form-VAT10 for each quarter within thirty days of the end of the quarter, other than the following class of dealer:**

(i) Who has opted for payment of tax under sub-section (2) of section 3 or section 5 or under a notification issued umder sub section (3) of section 8 of the Act; or

(ii) Whose annual tax liability [(output tax purchase tax reverse tax) including liability under Central Sales Tax Act 1956] was rupees Twenty thousand or less in the immedietly preceding year.

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

Explanation : Quarter means the period of three months ending on 30th june, 30th September, 31st March and month shall mean calendar month.

***[(1A)] Every dealer other than those who,-**

(i) Has opted for quarterly assessment under sub-section 23 of the Act; or

(ii) Has opted for payment of tax under sub-section (2) of section 3 or section 5 or under a notification issued under sub-section (3) of section 8 of the Act; or

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(iii) Has filed audit report under sub section (1) of section 73 of the Act, shall file, within nine month from the end of the relevant financial year an annual return in form VAT-10A

shall file, within nine months from the end of the relevant financial year, an annual return in form VAT-10A.} (2) The return referred to in sub-section (1) of section 21 of the Act, shall be submitted by a dealer who has opted for payment of tax under sub-section (2) of section 3 or section 5 or under a notification issued under sub-section (3) of section 8 of the Act}, in Form VAT-11, for the year within ninety days of the end of the year and shall be accompanied with treasury receipt(s)/bank challan(s) of authorized bank as a proof of deposit of tax under section 20 of the Act and shall be signed and verified by the dealer himself or his business manager. (3) The return required to be filed under sub-rule (1) by a registered dealer shall accompany

(a) treasury receipt(s)/bank challan(s) of authorized bank as a proof of deposit of tax;

(b) statement of purchases in Form VAT-07A; and

(c) statement of sales in Form VAT-8A,

and shall be signed and verified by the dealer himself or his business manager. If any of the above is not enclosed with the return, it shall be deemed to be a case of non-filing of return.}

(3-A) Every dealer other than those who,-

(i) has filed audit report under sub-section (1) of section 73 of the Act; or

(ii) has filed annual return in form VAT 10A

Shall submit, the trading account and in case of manufacturer, trading and manufacturing account and the profit and loss account, within nine months of the end of the year.

(4) The dealer shall file the return to his assessing authority or in the Taxpayers Service Office in whose area of operation, his principal place of business is situated, personally or through registered post.

(5) Where a dealer has more than one place of business, he shall include in the return, the turnover of the principal place of business as well as the turnover of all other places of business and shall file such return in accordance with sub-rule (4).

(6) Where a dealer discovers any omission or error in any return, other than annual return furnished by him, he may furnish revised return at any time prior to the due date of filing immediately succeeding return or receipt of the notice under sub-section (1) of section 24, whichever is earlier. However, where a dealer has not opted for quarterly assessment under sub-section (2) of section 23, he may furnish such revised return prior to the furnishing of the annual return in Form VAT-10A or receipt of the notice under sub-section (1) of section 24, whichever is earlier.}

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(7) Notwithstanding anything contained in this rule, any dealer or class of dealers as may be specified by the Commissioner, shall file the return referred to in sub-rule (1) of section 21 of the Act, electronically in the manner as provided in rule 19A of the said rules.}" by Rajasthan Value Added (Amendment) Rules, 2011 (S.no. 2746 dated 09-03-2011) w.e.f 01-04-2011

Subs. For "1A The return referred to in sub-section 21 of the Act, shall be submitted by a dealer, who has not opted for payment of tax under sub section (2) of section 3 or section 5, or under a notification issued sub-section (3) of section 8 of the Act, 1B [or whose net annual tax liability was less than rupees twenty thousand in the immediately preceding year,] in form VAT-10 for each quarter within thirty days of the end of the quarter. However where a dealer files return electronically along with the authority or the officer authorised by the Commissioner his intention to file monthly return he may file monthly return within twenty days of the end of the month.

Explanation :- Quarter means the period of three months ending on 30th June, 30th September, 31st December and 31st March and month shall mean calendar month by Rajasthan Value Added Tax (Third Amendment) Rules 2010 dated 30-06-2010 (S.no. 2644)

1A- Subs. For "1A The return referred to in sub-section 21 of the Act, shall be submitted by a dealer, who has not opted for payment of tax under sub section (2) of section 3 or section 5 of the Act in form VAT-10 for each within thirty days of the end of the quarter. Explanation Quarter mean the period of three months ending on 30th June, 30th September, 31st December and 31st March and month shall mean calendar month by Rajasthan Value Added Tax (Third Amendment) Rules 2008 dated 25-02-2008

1B ins. By Rajasthan Value added tax (Second Amendment) Rules 2010 w.e.f 09-03-2010 (S.no. 2601)

2. Subs for "2A [(1A) Every dealer other than those who has opted for quarterly assessment under sub-section (2) of section 23 shall file, within nine months from the end of the relevant financial year, an annual return in form VAT-10A" by Rajasthan Value Added Tax (Second Amendment) rules 2010 w.e.f. 09-03-2010 (S.No. 2601)]

2A. Ins by the Rajasthan Value added Tax (Nineth Amendment) Rules, 2008 w.e.f 12.09.2008 (S.No. 2439)

(3) Where the amount of tax, interest or late fee, if any, is not paid electronically, the dealer shall furnish the copy of e-challan], receipt in Form VAT-38 or certificate of tax deduction at

2A. Ins by the Rajasthan Value Added Tax (Nineth Amendment) Rules, 2008 w.e.f. 12.09.2008 (S.No. 2439)

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3. Subs. for "or section 5 of the Act" by the Rajasthan Value Added Tax (Amendment) Rules, 2008 dated 25.02.2008.

4. Subs. for "(3) The return required to be filed, under sub-rule (1) , by a registered dealer shall accompany. (a) treasury receipt(s) bank challan(s) of authorized bank as a proof of deposit of tax;

(b) declaration forms/certificates/forms required under the rules of the notification issued by the State Government.

(c) statement of purchase against VAT Invioces in Form VAT-07;

(d) copy of statement of import in Form VAT-48,

(e) statement of sales to registered dealers, other than those who exercise option under sub-section (2) of section 3, or under section 5 or sub-section (3) of section 8, in part I of Form VAT-08;]

(f) statement of inter State sales in Form VAT 50;

(g) copy of sales return register in Form VAT 12, if applicable,

(h) proff of export as specified in rule 28, if applicable; and

(i) account of declaration forms along with details of use, and shall be signed and verified by the dealer himself or his business manager. If any of the above requirements [except the requirement as mentioned in clause(h)] are not met with, it shall be deemed to be a case of non-filing of return. "by Rajasthan Value Added Tax (second Amendment) Rules, 2010 w.e.f. 9.3.2010 (S.No. 2601)"

4A. Subs. for "(e) statement of sales to registered dealers, other than those who exercise option under sub-section (2) of section 3 or under section 5, in Form VAT-09; by the Rajasthan Vaule Added Tax (Amendment) Rules, 2008 date 25.02.2008."

5. Subs for [(3-A) The dealer shall also submit;

(i) the trading account and in case of manufacturer, trading and manufacturing account and

(ii) the profit and loss accounts, within nine months of the close of the year by Rajasthan Value Added Tax (Second Amendment) Rules, 2010 w.e.f. 9.3.2010 (S.No. 2601)

5A Ins. by the Rajasthan Vaule Added Tax (Amendment) Rules, 2007 w.e.f. 9.3.2007 and subs for "The dealer shall also submit (i) the trading accont and in case of manufacturer, trading and manufacturing account, with the fourth quarterly return of the annual return, as the case may be, (ii) the profit and loss account within nine months of the close of the year in case of delaer registered under the companies Act, 1956 (Central Act No. 1 of 1956) and within six months in case of other dealers. by the Rajasthan Value Added Tax (Second Amendment) Rules, 2007 w.e.f. 3.5.2007"

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7. राज्य सरकार ने नियम–2005 के नियम 19 में दिनांक 09.03.2011 को संशोधन कर निम्न प्रावधान किये गये है

"19(1) Returns – (1) The return referred to in sub-section (1) of section 21 of the Act shall be submitted by a dealer in Form VAT 10, VAT 10A and VAT 11 as the case may be.
(2) Every dealer shall submit return oloctronically through the official web site of the department, unless otherwise notified by the Commissioner. The return shall be digitally signed by the dealer or his business manager and in case it is not digitally signed, the dealer shall furnish, the acknowledgement generated through Official web-site of the Department and shall be verified by himself or his business manager by affixing his signature on it, within fifteen days of the last date for filing of such return(s), failure to do so shall be deemed to tbe a case of non filing of returns(s)"
तथा उपनियम (9) में निम्नानुसार प्रावधित किया गया है :–

> **"Notwithstandiing any thing contained in sub-rule(1) to (7) the return (s) for the period prior to 01-04-2011 may be submitted in such manner and in such form which was in force for that period."**

8. उपरोक्त सतत एवं शीघ्र संशोधनों के विश्लेषण से ज्ञात होता है कि संशोधन दिनांक 01.04.2011 से पूर्व में वैट–11 की इलेक्ट्रोनिक फाइलिंग ऐच्छिक थी, परन्तु दिनांक 01.04.2011 के पश्चात अनिवार्य कर दी गई। साथ ही दिनांक 01.04.2011 के संशोधन के पश्चात नियम 19(9) के अनुसार यह स्पष्ट रूप से संशोधन कर प्रावधान कर दिया गया था कि नियम 19(1) से (7) में कुछ भी कहा गया हो, परन्तु दिनांक 01.04.2011 से पूर्व के विवरण तत्समय अर्थात दिनांक 01.04.2011 से पूर्व में प्रवृत्त प्रावधानों के अनुसार प्रस्तुत किये जा सकेगें। अतः संशोधित नियम से स्पष्ट परिलक्षित है कि वेट 10A की ई–फाइलिंग, उक्त संशोधित नियम के प्रभावशील होने की तिथि 01.04.2011 से लागू होगी परन्तु इसे पूर्व के प्रकरणों में पूर्ववत प्रवृत नियमानुसार ही प्रस्तुतीकरण किया जा सकेगा। अर्थात दिनांक 09.03.2011 को प्रभावित किये गये नियम, जिनके तहत वैट 10A के ई–फाइलिंग की अनिवार्यता है, दिनांक 01.04.2011 से पूर्व के प्रकरणों में लागू नहीं होगी।

9. वर्ष 2010–11 के वार्षिक विवरण पत्र वेट 10A के संबंध में आयुक्त, वाणिज्यक कर विभाग द्वारा जारी अधिसूचना निम्न प्रकार है :–

> **"In exercise of the powers conferred by sub-section (3) of section 21 of the Rajasthan Value Added Tax, 2003 (Act No. 4 of 2003) , 1, Khemraj Commissioner, Commercial Taxes Rajasthan Jaipur, being of the opinion that it is expedient in the public interest so to do, hereby. Extend the date of submission of annual return in Form VAT-10A, or Form VAT II, for the year 2010-11 up to 31st May, 2012."**

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चूंकि उक्त नियम एवं अधिसूचना के तहत प्रत्यर्थी व्यवहारी पर वर्ष 2010–11 हेतु वार्षिक विवरण प्रपत्र वैट 10A की ई–फाईलिंग करने की बाध्यता नहीं थी। अतः प्रत्यर्थी के अभिभाषक का यह तर्क मानने योग्य है कि उनके द्वारा मैन्यूअल रिर्टन समय सीमा में प्रस्तुत कर दिया गया था। अतः उपरोक्त विवेचनानुसार अपीलीय अधिकारी के आदेश की पुष्टि करते हुए विभाग द्वारा प्रस्तुत अपील अस्वीकार की जाती है।

10. परिणामस्वरूप राजस्व द्वारा प्रस्तुत अपील अस्वीकार की जाती है।

11. निर्णय सुनाया गया।

6.6.2016
(मदन लाल)
सदस्य