

राजस्थान कर बोर्ड, अजमेर

अपील संख्या - 294 / 2011 / श्रीगंगानगर.

मैसर्स एन एन डी वुड इण्डस्ट्रीज,  
13 बी, रिको, विहार उद्योग, श्रीगंगानगर.

.....अपीलार्थी.

बनाम

वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, श्रीगंगानगर

.....प्रत्यर्थी.

खण्डपीठ

श्री सुनील शर्मा, सदस्य

श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री वी. के. पारीक, अभिभाषक

.....अपीलार्थी की ओर से.

श्री आर. के. अजमेरा,

उप-राजकीय अभिभाषक

.....प्रत्यर्थी की ओर से.

निर्णय दिनांक : 22 / 03 / 2016

निर्णय

1. यह अपील अपीलार्थी व्यवहारी द्वारा उपायुक्त (अपील्स), वाणिज्यिक कर विभाग, बीकानेर (जिसे आगे 'अपीलीय अधिकारी' कहा जायेगा) के राजस्थान बिक्री कर अधिनियम 1994 (जिसे आगे 'अधिनियम' कहा जायेगा) की धारा 84 / राजस्थान मूल्य परिवर्धित कर अधिनियम 2003 (जिसे आगे 'वेट अधिनियम' कहा जायेगा) की धारा 82 में अपील संख्या 194 / आरएसटी / श्रीगंगानगर / 2008-09 में पारित आदेश दिनांक 30.08.2010 के विरुद्ध प्रस्तुत की गयी है, जिसमें अपीलीय अधिकारी ने अपीलार्थी के विरुद्ध वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन वृत्त-श्रीगंगानगर (जिसे आगे 'कर निर्धारण अधिकारी' कहा जायेगा) द्वारा अधिनियम की धारा 29(7), 65 व 58 में पारित कर निर्धारण आदेश में आरोपित शास्ति रुपये 5,15,868/- को यथावत रखते हुये अपील अस्वीकार की है, को विवादित किया है।

2. कर निर्धारण अधिकारी द्वारा कर निर्धारण वर्ष 2005-06 के लिये अधिनियम के अधीन पारित कर निर्धारण आदेश दिनांक 19.03.2008 में करापवंचन का प्रकरण बनाते हुये अघोषित/छिपाई गयी बिक्री पर कर राशि रुपये 2,57,934/- एवं ब्याज राशि रुपये 64,100/- एवं धारा 65 के अधीन शास्ति राशि रुपये 5,15,868/- का आरोपण किया गया। अपीलार्थी व्यवहारी के द्वारा अपीलीय अधिकारी के समक्ष प्रस्तुत अपील में शास्ति राशि रुपये 5,15,868/- को विवादित किया गया था।





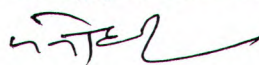
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6. उभयपक्षों की बहस सुनी गयी तथा उपलब्ध रिकार्ड का अवलोकन किया गया।
7. हस्तगत प्रकरण में विवादित बिन्दु यह है कि अधिनियम की धारा 65 में आरोपित शास्ति विधिसम्मत है अथवा नहीं ? अधिनियम / राजस्थान बिक्री कर नियम 1995 के सुसंगत प्रावधान जो पंजीकृत व्यवहारी को विवरण प्रपत्र प्रस्तुत करने, लेखा पुस्तको के संधारण करने, उनको अधिनियम के अधीन जाँच हेतु प्रस्तुत करने के लिये बाध्यकारी है, उनका अध्ययन आवश्यक है।
8. राजस्थान बिक्री कर अधिनियम, 1994 की धारा 25, 26, 65, 75 तथा नियम 19 व 36 के प्रावधान निम्न प्रकार है :-

### Section 25. Payment of tax

- (1) Tax payable under this Act shall be deposited into a government treasury or a bank authorised to receive money on behalf of the State Government on the basis of the accounts of a dealer in such manner and at such intervals as may be prescribed for different categories of dealers.
- (2) Notwithstanding anything contained in sub-section (1), the State Government may by notification in the Official Gazette require any dealer or class of dealers specified therein, to pay tax at intervals shorter than those prescribed under sub-section (1).
- (3) Notwithstanding anything contained in sub-sections (1) and (2), where the State Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, defer the payment of tax payable by any class of dealers, with or without interest, for any period on such conditions and under such circumstances as may be specified in the notification.
- (4) Notwithstanding anything contained in this Act, in the case of a works contract, an amount in lieu of tax may be deducted by the awardee at such rate not exceeding three per cent of the total value of the contract, in such manner and under such circumstances as may be prescribed, from every bill of payment to a contractor and such sum shall be deposited or credited in the government account within the specified time and in the prescribed manner.
- (5) Every deposit of tax or deduction of amount in lieu of tax made under this section shall be deemed to be provisional subject to adjustment against the tax liability determined in the assessment for any year made under section 29.




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**Section 26. Filing of returns**

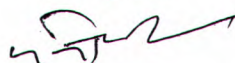
- (1) Every registered dealer, and such other dealer as may be required by notice to do so by the assessing authority shall furnish prescribed returns, for the prescribed period, in the prescribed form, in the prescribed manner and within the prescribed time to the assessing authority.
- (2) The assessing authority may extend the date for submission of any return to be filed by any dealer or class of dealers under sub-section (1) by a period not exceeding fifteen days.
- (3) Every return to be filed under sub-section (1) shall be accompanied by a treasury receipt or receipt of the bank authorised to receive money on behalf of the State Government showing the deposit of full amount of tax due on the basis of the return.
- (4) Notwithstanding anything contained in sub-section (1), no return shall be required to be filed by a registered dealer who deals in generally exempted and/or tax paid goods and whose turnover in the previous year does not exceed such limit as may be prescribed with or without any condition.
- (5) Where a dealer discovers any omission or error in any return furnished by him under sub-section (1), he may furnish a revised return within [such time as may be prescribed not exceeding three hundred sixty five days] after the close of the year to which it relates, and the burden of proving that the omission or the error was *bona fide*, shall be on such dealer.

**Section 65. Penalty for avoidance or evasion of tax**

Where any dealer, whether or not registered, has concealed any particulars from any return furnished by him or has deliberately furnished inaccurate particulars therein or has concealed any transaction of sale or purchase from his accounts, registers and documents required to be maintained under this Act or has avoided or evaded tax in any other manner, the assessing authority may direct that such dealer shall pay by way of penalty, in addition to the tax payable by him under law, a sum equal to double the amount of tax avoided or evaded.

**Section 75. Accounts to be maintained by a dealer**

- (1) Every dealer liable to pay tax under this Act shall keep and maintain a true and correct account of his business activities in an intelligible form including the value and quantity of the goods received, manufactured, sold or otherwise disposed of or held in stock by him.



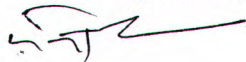

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- (2) Every manufacturer liable to pay tax under this Act shall, in addition to accounts referred to in sub-section (1), maintain a stock book of raw materials used and finished goods produced.
- (3) The accounts required to be maintained under sub-section (1) shall be kept by the dealer at the place (s) of business as recorded in his certificate of registration, and the stock book as referred to in sub-section (2) shall be kept at the place where manufacturing activity is carried on, however final accounts, annual statement, registers and documents shall be kept at principal place of business.
- (4) Where a dealer has established branches at places in the State other than the principal place of business, the necessary accounts, registers and documents relating to the business activities being carried on at each branch shall, without prejudice to the provisions of sub-section (3), be kept by him at such branch.
- (5) The accounts, registers and documents, relating to a year shall be preserved and kept by a dealer for six years excluding the year to which they relate, and this period of six years shall be deemed extended by such time until any pending proceeding referring thereto under the Act is finally disposed of.

**Rule 19. Return of turnover.-**

- (1) The return referred to in section 26 shall be submitted in such form as may be prescribed in sub-rule (4). The return shall be -
  - (a) signed by the dealer himself or his authorized agent;
  - (b) verified in the manner indicated therein;
  - (c) accompanied by a treasury receipt/bank challan for the deposit for the deposit of tax as required under section 25; and
  - (d) accompanied by form ST 17A of goods sold within the State against declaration forms.
- (2) The dealer may file the return before the assessing authority concerned or send it by registered post.
- (3) If any return is not complete as required under sub-rule (1), the assessing authority shall afford the dealer an opportunity of being heard before deciding whether cognisance of such return is to be taken or not.
- (4) (a) In the case of grant of a new certificate of registration to a dealer, he shall be required to file the return in form ST 5
  - (i) a return for each quarter, if any, for the period prior to the date of the grant of the certificate of registration, within thirty days from the day on which such certificate of registration is delivered to him; and




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(ii) a return for each quarter of the remaining part of the assessment year within thirty days of the close of each quarter.

(b) In the case of a (registered) dealer not covered by clause (a) above, the return in form ST 5 shall be filed by him for each quarter of the Rajasthan Sales Tax Act, 1994 and the Central Sales Tax Act, 1956 exceeds Rupees twenty thousand in the previous assessment year.

**Explanation** - Quarter means the period of three months ending on 30th June, 30 th September, 31st December or 31st March.

(bb) Notwithstanding anything contained in clause (b) or (c) of this sub-rule where a registered dealer dealing exclusively in one or more casual commodities and who deposits tax at the check post, every time the goods are dispatched, may file his return in Form ST 5A annually within the time prescribed under this rule.

(c) Every dealer shall file, within (nine months) of end of the relevant financial year, an annual return in form ST 5A. [However, the return in Form ST 5A for assesment year 1995-96 and 1996-97 may be filed upto 31.12.1996 and 31.12.1997 respectively.]

(d) Every registered dealer who deals exclusively in generally exempted and/or tax paid goods and if his turnover exceeds Rupees fifteen lac in a year, and in case of voluntary registration of such dealer irrespective of his turnover, shall file [within nine months] of the end of the relevant financial year, an annual return in Form ST 5A.

(e) Notwithstanding anything contained in this sub-rule, every dealer other than a manufacturer, dealing exclusively in sales tax paid and/or sales tax exempted goods, shall be required to file an annual return in form ST 5B; within nine months of the end of the relevant financial year.

(f) Notwithstanding anything contained in this sub-rule, every dealer other than a manufacturer or a dealer required to pay tax monthly, shall be required to file an annual return in Form ST 5C, within nine months of the end of the relevant financial year.

(5) Notwithstanding anything contained in sub-rule (4), where the business of a dealer is closed or transferred, he shall, within thirty days of such closure or transfer, submit a return in form ST 5A for the period from the beginning of the financial year in which such closure or transfer has taken place, upto the date of such closure or transfer.




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- (6) Notwithstanding anything contained in sub-rule (4), no return shall be required to be filed by a registered dealer,
- Who effects sales exclusively by way of transfer of the right to use goods and opts for exception from tax on the exemption fee as notified by the Government, or
  - Who is a works contractor and exclusively undertakes the execution of contracts relating to building, road, dam, bridge, canal or other notified work and opts for exemption from tax on payment of exemption fee as notified by the State Government.
- (7) 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 such return shall be filed by him before his assessing authority and he shall also intimate the details of turnover of each place of business on a plain paper to the Assistant Commissioner/Commercial Taxes Officer, in whose jurisdiction such places of business are situated.
- (8) Where a dealer discovers any omission or error in any return furnished by him, he may furnish a revised return within nine months of the end of the relevant financial year.

**Rule 36. Accounts to be maintained by a dealer.-**

- Subject to the provisions of section 75, every dealer registered under the Act shall maintain his accounts according to the system of accounting prevailing in the trade and industry.
- Where such dealer is a manufacturer, he shall maintain in addition to the stock book as required under sub section (3) of section 75, separate accounts of raw materials, processing articles, finished goods and by-products.
- Where such dealer is liable to pay tax under sub-section (3) of section 12 of the Act, on Value Added Tax System, he shall maintain in addition to the accounts under sub-rule (1) and (2) above the details of the purchases within the State and Value Added Tax Paid in form ST 29 and a register of Value Added Tax Credit in Form ST 30, and shall submit a copy thereof along with his quarterly returns or the annual return, as the case may be.
- Every such dealer shall also maintain separate accounts of within State sales tax, inter-State sales tax, surcharge on sales tax, octroi, or any other tax, if leviable under law.




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9. कर निर्धारण अधिकारी द्वारा अपीलार्थी व्यवहारी के व्यवसाय स्थल पर दिनांक 25.05.2007 को लेखा पुस्तकें प्रस्तुत करने के लिये निर्देशित किये जाने पर लेखा पुस्तकें प्रस्तुत नहीं की गयी तथा लेखा पुस्तकें मुनीम के पास होने का कारण बताया गया। इसके पश्चात सुनवायी दिनांक 29.05.2007 व दिनांक 11.06.2007 को भी लेखा पुस्तकें प्रस्तुत नहीं की गयी। सुनवायी दिनांक 14.06.2007 को अपीलार्थी व्यवहारी ने बहीयात/लेखा पुस्तकें दिनांक 11.06.2007 को खो जाने का कारण बताया तथा गुमशुदगी के संबंध में सदर थाना श्रीगंगानगर में दर्ज गुमशुदगी रिपोर्ट की प्रति प्रस्तुत की। गुमशुदगी की सूचना दिनांक 13.06.2007 को 5 बजे पुलिस थाना सदर श्रीगंगानगर में प्रस्तुत की गयी।

10. वाणिज्यिक कर अधिकारी वर्क्स टैक्स श्रीगंगानगर ने पत्र क्रमांक 396 दिनांक 10.07.2006 के द्वारा उपायुक्त (प्रशासन) वाणिज्यिक कर, श्रीगंगानगर को मैसर्स एन एन डी बुड इण्डस्ट्रीज श्रीगंगानगर के बिल सत्यापन करवाने के लिये पत्र लिखा गया। बिल सत्यापन की कार्यवाही के दौरान करापवंचन का प्रकरण पाया गया।

11. अभिलेख से यह तथ्य निर्विवादित रूप से स्पष्ट है कि अपीलार्थी व्यवहारी ने कर निर्धारण वर्ष 2005-06 के लिये वार्षिक विवरण पत्र एस.टी. 5ए दिनांक 30.12.2006 को प्रस्तुत किया जो पत्रावली के पृष्ठ संख्या-61 पर उपलब्ध है, जिसमें सकल टर्नओवर शून्य घोषित किया है। करापवंचन का प्रकरण बनाये जाने के पश्चात अपीलार्थी व्यवहारी ने वार्षिक विवरण पत्र दिनांक 08.06.2007 को प्रस्तुत किया जिसमें सकल टर्नओवर रुपये 22,56,380/- का घोषित किया। इस तिथि को देय कर रुपये 1,00,287.98/- को भी जमा कराने का कोई प्रमाण संलग्न नहीं है।

12. माननीय उच्चतम न्यायलय ने नारायण दास सूरज भान बनाम आयुक्त बिक्री कर, उ.प्र. न्यायिक दृष्टांत (1968) 21 STC 104 में व्यवस्था दी है कि :-

Clause (b) of section 15A(1) of the U.P. Sales Tax Act, 1948, is attracted as soon as it is shown that the assessee has concealed the particulars of his turnover or deliberately furnished inaccurate particulars of such turnover in the return filed under section 7. The word "inaccurate" particulars of such turnover' in section 15A(1)(b) refer back to clause (a) where the return under section 7 is specified. Clause (b) refers to default in respect of anything done by the assessee in a proceeding under section 21. As there is no question of furnishing a return of a turnover in a proceeding under section 21,

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the assessee cannot be guilty of concealing particulars of his turnover from, or of furnishing inaccurate particulars in, a proceeding under section 21. Even if in response to a notice issued under section 21(1) the assessee files a fresh statement of his turnover he is still liable to be penalized under section 15A for concealing or deliberately furnishing inaccurate particulars in the return filed under section 7. The provisions of section 15A(1)(b) are fully applicable where in a proceeding under section 21c the assessing authority satisfied that there was concealment or inaccurate furnishing of particular in the return filed under section 7. The default was in the return filed under section 7 and that default continues and is not obliterated even though the assessee in a proceeding under section 21 admits the default and supplies correct particular of its turnover.

The penalty under section 15A(1)(b) should be imposed on the entire turnover assessed to tax under section 21 i.e. on the turnover concealed from or incorrectly disclosed in the return submitted under section 7, and not in any statement submitted by the assessee in the proceeding under section 21.

13. माननीय उच्चतम न्यायालय ने नाथूराम रमेश कुमार बनाम आयुक्त वैट दिल्ली न्यायिक दृष्टांत (2014) 70 VST 1 में व्यवस्था दी है कि :-

"That once it was found that with some oblique motive, effort was made to show lower sale proceeds than the actual, the orders imposing penalty could not be questioned. Therefore, no interference could be made even with the quantum of penalty."

14. हस्तगत प्रकरण में समग्रता के परिप्रेक्ष्य में अवलोकन पश्चात यह निष्कर्षित किया जाता है कि :-

क) अपीलार्थी व्यवहारी अधिनियम की धारा 25 की पालना में कर निर्धारण वर्ष 2005-06 की अवधि के लिये देय कर का भुगतान विहित समयावधि में करने में असफल रहा है। अपीलार्थी व्यवहारी ने कथित देय कर रुपये 1,00,287.00/- दिनांक 11.06.2007 को जमा कराये है। अपीलार्थी व्यवहारी द्वारा संगणित देय कर की गणना को लेखा पुस्तकों से सत्यापित कराने में असफल रहा है।

ख) अपीलार्थी व्यवहारी अधिनियम की धारा 26 की पालना में कर निर्धारण वर्ष 2005-06 की अवधि के लिये प्रस्तुत किये जाने वाले त्रैमासिक विवरण प्रपत्र विहित समयावधि में प्रस्तुत करने में असफल रहा है।




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ग) अपीलार्थी व्यवहारी अधिनियम की धारा 26 की पालना में कर निर्धारण वर्ष 2005-06 की अवधि के लिये वार्षिक विवरण S.T.5A जो दिनांक 30.12.2006 को प्रस्तुत किया गया है। उसमें शून्य टर्नओवर घोषित किया है तथा जानबूझकर गलत/अयथार्थ विवरण प्रस्तुत किया है तथा बिक्री के संव्यवहारों को छिपाया है।

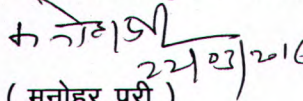
घ) अपीलार्थी व्यवहारी द्वारा कर निर्धारण वर्ष 2005-06 की अवधि के लिये कथित संशोधित वार्षिक विवरण प्रपत्र S.T.5A जो दिनांक 08.06.2007 को प्रस्तुत किया है वह संज्ञानयोग्य नहीं है, क्योंकि राजस्थान बिक्री कर नियम 1995 के नियम 19 के उपनियम 8 में प्रावधान है कि प्रस्तुत किये गये रिटर्न में त्रुटि पता लगने पर संबंधित वित्तीय वर्ष के 9 माह के भीतर अर्थात् 31.12.2006 तक प्रस्तुत किये जाने योग्य होता है।

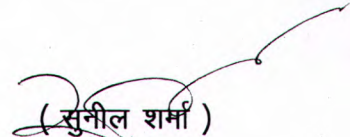
ड) अपीलार्थी व्यवहारी द्वारा कर निर्धारण वर्ष 2005-06 के लिये किसी भी समय निर्देशित किये जाने पर लेखा पुस्तकें कर निर्धारण अधिकारी के समक्ष प्रस्तुत नहीं की गयी। अंत में लेखा पुस्तकों की गुमशुदगी की रिपोर्ट प्रस्तुत कर दी। परिस्थितियाँ एवं घटनाक्रम आधार पर कूटरचित कहानी प्रतीत होती है।

च) अपीलार्थी व्यवहारी द्वारा कर निर्धारण वर्ष 2005-06 के लिये अधिनियम की धारा 65 के अधीन शास्ति आरोपण को आमंत्रित किया है।

छ) माननीय उच्चतम न्यायालय द्वारा दिये गये उपरोक्त पैरा संख्या 12 व 13 में दी गयी व्यवस्था के प्रकाश में अधिनियम की धारा 65 में आरोपित शास्ति को यथावत रखने में कोई त्रुटि नहीं की गयी है। अपीलीय अधिकारी के आदेश की पुष्टि की जाती है। अपीलार्थी की अपील अस्वीकार किये जाने योग्य होने के कारण अस्वीकार की जाती है।

15. निर्णय सुनाया गया।

  
(मनोहर पुरी)  
सदस्य

  
(सुनील शर्मा)  
सदस्य