# राजस्थान कर बोर्ड, अजमेर

**अपील संख्या – 505/2010/अलवर.**

मैसर्स अशोका लिलेण्ड लिमिटेड, अलवर. .....अपीलार्थी.

बनाम

वाणिज्यिक कर अधिकारी, विशेष वृत्त–अलवर. .....प्रत्यर्थी.

**खण्डपीठ**
**श्री खेमराज, अध्यक्ष**
**श्री मनोहर पुरी, सदस्य**

**उपस्थित : :**

श्री विवेक सिंघल, अभिभाषक .....अपीलार्थी की ओर से.

श्री रामकरण सिंह,
उप–राजकीय अभिभाषक .....प्रत्यर्थी की ओर से.

**निर्णय दिनांक : 20/10/2016**

## निर्णय

1. यह अपील अपीलार्थी व्यवहारी द्वारा उपायुक्त (अपील्स) प्रथम, वाणिज्यिक कर विभाग, अलवर (जिसे आगे **'अपीलीय अधिकारी'** कहा जायेगा) के अपील संख्या 98/उपा/अपील्स/प्रथम/अल/आरएसटी/09–10/10 में पारित किये गये आदेश दिनांक 29.01.2010 के विरूद्ध प्रस्तुत की गई है। अपीलीय अधिकारी ने उक्त आदेश से वाणिज्यिक कर अधिकारी, विशेष वृत्त–अलवर (जिसे आगे **'कर निर्धारण अधिकारी'** कहा जायेगा) के द्वारा राजस्थान मूल्य परिवर्धित कर अधिनियम 2003 (जिसे आगे **'वेट अधिनियम'** कहा जायेगा) की धारा 23 के अन्तर्गत कर निर्धारण वर्ष 2006–07 के लिये पारित किये गये आदेश दिनांक 12.08.2009 में इनपुट टैक्स क्रेडिट राशि रूपये 22,15,510/– के सम्बन्ध में अपील अस्वीकार की गई है। अपीलार्थी ने अपीलीय अधिकारी द्वारा अपील अस्वीकार करने के आदेश को विवादित किया है।

2. प्रकरण के संक्षेप में तथ्य इस प्रकार हैं कि कर निर्धारण अधिकारी द्वारा अपीलार्थी का वर्ष 2006–07 का कर निर्धारण वेट अधिनियम की धारा 23 के तहत दिनांक 30.03.2009 को पारित किया गया है, जिसमें उक्त अवधि के दौरान मैसर्स इण्डियन ऑयल कॉरपोरेशन, भरतपुर से खरीदे गये डीजल कीमतन रूपये 1,10,62,550/– पर वेट अधिनियम की धारा 18 के तहत क्लेम किये गये आगत कर रूपये 22,12,510/– को, राज्य सरकार की अधिसूचना क्रमांक एफ.12(63)एफडी/टैक्स/2005–172 दिनांक 31.03.2006 के अनुसार इस आधार पर अस्वीकार किया गया है, कि एच.एस.डी. डीजल के प्रथम बिन्दु पर ही राज्य का कर देय है।

लगातार.....2

3. अपीलार्थी के विद्वान अभिभाषक ने बहस में कथन करते हुए अपीलीय अधिकारी के आदेश को अविधिक तथा विधि एवं तथ्यों के विपरीत होना बताया है। इसी प्रकार कर निर्धारण अधिकारी द्वारा पारित आदेश को भी विधि एवं तथ्यों के विपरीत होना बताया है। अपीलार्थी राजस्थान राज्य में एक पंजीकृत व्यवहारी है जो मोटर वाहन का विनिर्माण करता है। अपीलार्थी द्वारा मोटर वाहन के विनिर्माण में डीजल का कच्चे माल के रूप में प्रयोग होता है अतः इनपुट टैक्स क्रेडिट राशि रूपये 22,12,510/– का दावा किया गया था। अपीलार्थी व्यवहारी ने वैट अधिनियम की धारा 18 की पूर्ण पालना की है यथा डीजल की खरीद राज्य के पंजीकृत व्यवहारी से की गई है तथा कच्चे माल के रूप में प्रयोग किया गया है तथा विनिर्मित माल को राज्य के भीतर एवं अन्तर्राज्यिक व्यापार के क्रम में विक्रय किया गया हैं। बहस में आगे कथन किया कि वैट अधिनियम की धारा 18(1)(ई) में संशोधन आलौच्य अवधि 2006–07 में नहीं किया गया था वरन् यह संशोधन दिनांक 09.03.2007 को किया गया था, जिसमें प्रथम बार एच.एस.डी. को धारा 18(1)(ई) के तहत इनपुट टैक्स के प्रयोजन से अधिसूचित किया गया था। अपीलार्थी व्यवहारी ने माल प्रमुखतः इण्डियन ऑयल कॉरपोरेशन से खरीद किया है, जिन्होंने इन्वॉईस में वैट चार्ज किया है तथा इस माल को कच्चे माल के रूप में मोटरवाहन के निर्माण में प्रयोग में लिया है। कच्चे माल की परिभाषा में प्रोसेसिंग मेटेरियल, कन्ज्यूमेबल्स इत्यादि को भी शामिल किया गया है। विनिर्माण की परिभाषा व्यापक दी गई है। कर निर्धारण अधिकारी ने बिना नोटिस दिये तथा नैसर्गिक न्याय के सिद्धान्तों की पालना नहीं करते हुए अधिसूचना क्रमांक 205–172 दिनांक 31.03.2006 के संदर्भ से इनपुट टैक्स के दावे को स्वीकार किया है। इनवॉईस एक्साईज नियमों के नियम 11 के तहत जारी किये गये है। बहस में अपने कथन के समर्थन में निम्न न्यायिक दृष्टान्त प्रस्तुत किये है :–

**A.** **श्री श्याम एन्टरप्राईजेज बनाम संयुक्त आयुक्त बिक्री कर निर्णय दिनांक 29.11.2011 न्यायिक दृष्टान्त (2012) 49 वी.एस.टी. 177 (वैस्ट बंगाल टैक्सेशन ट्रिब्यूनल)**

**B.** **राजपूत सप्लाईज सिण्डीकेट बनाम संयुक्त आयुक्त बिक्री कर निर्णय दिनांक 01.03.2011 न्यायिक दृष्टान्त (2013) 57 वी.एस.टी. 197 (वैस्ट बंगाल टैक्सेशन ट्रिब्यूनल)**

**C.** **भारत सरकार बनाम ओंकार एस कंवर एण्ड अन्य निर्णय दिनांक 27.09.2002 न्यायिक दृष्टान्त (2007) 7 सुप्रीम कोर्ट केसेज पेज 591**

**D.** **जे श्रीनिवास राव बनाम आन्द्रप्रदेश सरकार निर्णय दिनांक 24.11.2006 न्यायिक दृष्टान्त (2007) 8 आर.सी. 124 सुप्रीम कोर्ट**

लगातार.....3

**E. वाणिज्यिक कर अधिकारी उदयपुर बनाम नलवाया मिनरल्स निर्णय दिनांक 08.08.1989 न्यायिक दृष्टान्त (1990) 79 एस.टी.सी. 113 (राजस्थान उच्च न्यायालय)**

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

4. प्रत्यर्थी की ओर से विद्वान उप–राजकीय अभिभाषक ने अपीलीय आदेश का समर्थन किया।

5. उभयपक्षों की बहस पर मनन किया गया व पत्रावली का अवलोकन किया गया। उद्धरित न्यायिक दृष्टान्तों का ससम्मान अध्ययन किया गया।

6. प्रकरण के निस्तारण के क्रम में वैट अधिनियम की धारा 18, नियम 18, 38 व 11 का अध्ययन आवश्यक है जो निम्न प्रकार है :–

**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

लगातार.....4

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.

**Rule 18. Computation of input tax credit.**

(1) The extent of input tax credit available to a registered dealer, for a tax period, shall be equal to the amount of tax paid on purchases in the State as evident from the Original VAT invoice, and where such invoice has been lost or destroyed, on the basis of duplicate copy thereof issued to him in accordance with sub-rule (4) of rule 38, subject to the other provisions of this rule and the following conditions:-

(a) that such dealer has maintained a true and correct separate account of his purchases against VAT Invoices in Form VAT-07.

(b) that such dealer has maintained a true and correct separate account of his sales in Form VAT-08.

लगातार.....5

(2) Input tax credit in respect of purchase of capital goods on VAT invoice by an existing unit shall be allowed in two half yearly equal installments in the month of September and March. However, in case of a new industry or expansion or diversification of an existing industry, such input tax credit shall be allowed in the above manner starting from the immediately succeeding September or March, after the first sale of the goods manufactured from such capital goods:

Provided that in case of an existing unit, where the per item value of the capital goods does not exceeds rupees one lac, the input tax credit shall be allowed in the tax period of their purchases.

(3) Input tax credit in respect of raw material used in the manufacture of taxable goods given on lease, shall be available to the lessor in twelve equal monthly installments commencing from the month of issuance of first VAT invoice in respect of such lease.

(4) Input tax credit in respect of taxable goods given on lease, shall be available to the lessor in twelve equal monthly installments commencing from the month of issuance of first VAT invoice in respect of such lease.

(5) Input tax credit to the lessee in respect of lease money of capital goods, shall be available in the tax period in which the original VAT invoice has been received.

(6) The input tax credit under this rule shall be available on the basis of books of accounts and records of the dealer. Where, the amount of input tax credit is not determinable from the books of accounts of the dealer, the amount of input tax credit shall be allowed proportionate to the extent for the purposes specified in sub-section (1) of section 18 of the Act.

(6A) Where a dealer is required to deposit tax on all kinds of stone in all their forms, whether used as building material or otherwise, including Kota stone, marble and granite, at the check posts, such dealer, may by affixing a seal to this effect, shall mention on his VAT invoice, the total input tax credit available to him from the commencement of the year upto issuance of such invoice, the input tax credit he claimed, the balance of input tax credit available to him, and the amount of tax payable and deposited on the basis of VAT invoice. The dealer shall also authenticate such information on the VAT invoice itself. On receipt of such authenticated VAT invoice, the officer incharge of the check post shall collect the tax payable as per such VAT invoice. The dealers availing this facility shall submit monthly statement of his purchases along with available input tax credit in Form VAT-07 and output tax in Form VAT-08 within seven days of the close of the month, to the assessing authority.

लगातार.....6

(7) Where the turnover of a dealer who has opted to pay tax under sub-section (2) of section 3, exceeds the limit of the said subsection or his liability accrues under clause (a) or (b) of sub-section (1) or under sub-section (5) of section 3, no input tax credit shall be allowed on the goods in stock on the date of occurrence of such event.

(7A) Where a registered dealer having goods in stock which had not suffered tax at full rate, intends to exercise option to pay tax under sub-section (2) of section 3, he shall deposit tax on such stock at the rates applicable at the time of exercising the option, and proof of tax so deposited shall be submitted along with his application for exercising such option.

(8) A registered dealer who opts to pay tax under sub-section (2) of section 3, the credit of input tax availed by him on the goods in stock shall be reversed.

(9) The dealer opting for payment of tax under sub-section (2) of section 3 or section 5, shall not be entitled to claim input tax credit in respect of the goods in stock on the date of exercise of such option.

(10) In case a dealer opts to pay tax in accordance with subsection (7) of section 4, the following procedure shall be adopted.

(i) A registered dealer who opts to pay tax at the full rate on the maximum retail price of the notified goods under sub-section (7) of section 4, shall submit an application to this effect, on a plain paper to his assessing authority or officer authorized by the Commissioner, within sixty days of commencement of this Act or within thirty days of start of his business, whichever is later. For subsequent years, such application shall be submitted within thirty days of the commencement of the financial year. The opting dealer shall charge tax on the maximum retail price if it is exclusive of tax and in case the maximum retail price is inclusive of tax, the dealer shall charge tax on the price as calculated hereunder.

Price = (Maximum Retail Price x 100)/ (100 +Rate of tax)

The amount of tax so charged shall be the output tax of such dealer.

(ii) Where a registered dealer purchases any goods from the dealer covered under sub-rule (1), sale of such goods made by him shall not be included for determining his turnover of sales as defined in clause (41) of section 2. Such dealer shall

लगातार.....7

maintain a separate account of such goods, tax paid and reimbursement of tax so paid, and shall submit the details thereof, along with his returns to his assessing authority or authorized officer. He shall also indicate separately in his sale invoice, the amount of reimbursement of tax paid by him at the time of purchase.

(iii) Where a registered dealer purchases any goods, as notified by the State government under sub-section (7) of section 4, from a registered dealer, other than the dealers specified in sub-rule (1), sale of such goods made by him shall not be included for determining his turnover of sales as referred to in clause (41) of section 2. Such dealer shall maintain a separate account of such goods, tax paid and reimbursement of tax so paid, and shall submit the details thereof, along with his returns to his assessing authority or authorized officer. He shall also indicate separately in his sale invoice, the amount of reimbursement of tax paid by him at the time of purchase.

(11) The input tax credit under section 19 of the Act, for stock on the date of commencement of the Act shall be available only after the quarter ending on 30th June, 2006, and the eligible dealer shall be entitled to claim such credit in six equal monthly instalments starting from July 1, 2006, provided that such dealer has submitted the information required under sub-section (2) of section 93 of the Rajasthan Sales Tax Act, 1994, within the time specified in the notification. However, in case a dealer has availed such input tax credit even before the above specified period, such input tax credit would be reversed unless the dealer deposits interest for the period of earlier availment of such input tax credit up to March 31, 2008.

**Rule 38. Issuance of an Invoice.**

(1) A registered dealer, other than registered dealer who opts for payment of tax under sub-section (2) of section 3 or under section 5, making a taxable sale shall issue a VAT invoice marked as original to the purchaser for each such sales made by him and shall retain a copy thereof.

(2) The VAT invoice issued under sub-rule (1) shall contain the following particulars on the original as well as on all the copies thereof.

(a) the word "VAT INVOICE" and in case the option under sub-section (7) of section 4 has been exercised the expression "INVOICE FOR TAX ON MRP" in bold letters at the top or at any prominent place;

लगातार.....8

(b) the name, address and registration number of the selling dealer;

(c) the name and address of the purchaser and where the purchaser is registered under the Act the registration number of the purchasing dealer;

(d) continuous serial number running throughout the year and the date on which the VAT invoice is issued;

(e) full description of the goods;

(f) the quantity or number, as the case may be, of the goods;

(g) the value of the goods sold;

(h) the rate and amount of tax charged thereon indicated separately; and

(i) signature of the selling dealer, or his declared business manager or person authorized by the selling dealer.

(3) No input tax credit shall be allowed unless the dealer makes full compliance of sub-rule (1) and (2).

(4)(a) In case a VAT invoice issued by the registered selling dealer, is lost or destroyed, a duplicate of such VAT invoice shall be issued by the selling dealer, to the purchasing dealer with the following declaration recorded in the red ink and signed by the selling dealer or his declared business manager as the case may be:-

**DECLARATION**

"I, hereby declare that this is the duplicate VAT invoice of VAT invoice No. ..... issued on dated ..... and issued to M/s ..... having registration No. .....

Signature Status ..... ".

(b)The purchasing dealer who has obtained the duplicate copy of the VAT invoice shall inform his assessing authority or the authorized officer within the tax period in which the duplicate invoice was received.

(5) A registered dealer, who has opted for payment of tax under sub-section (2) of section 3 or under section 5, sells taxable goods of value exceeding rupees five hundred in any one transaction, shall issue an invoice marked as original to the purchaser for each such sale made by him and shall retain a duplicate copy thereof.

(6) Notwithstanding any thing contained in sub-rule (5), where a purchaser demands an invoice irrespective of the purchase value, the registered dealer shall issue invoice.

लगातार.....9

(7) The invoice issued under sub-rule (5) shall contain the following particulars on the original as well as on all the copies thereof.

(a) the word "invoice" in bold letters at the top at any prominent place;

(b) the name, address and registration certificate number of the selling dealer;

(c) continuous serial number running throughout the year and the date on which the invoice is issued;\

(d) full description of the goods with its value; and

(e) signature of the selling dealer, or his servant, manager or agent duly authorized by him.

(8) Notwithstanding any thing contained in sub-rule (1) above, where a dealer registered under the Act is also registered under the Central Excise Act, 1944 (Act No. 1 of 1944) and issues an invoice for removal of goods in the course of inter-State trade or commerce, containing the particulars as prescribed in sub-rule (2), it would be treated as VAT invoice and the provisions of sub-rule (3) and (4) shall mutates mutandis apply.

(9) The State Government may, by notification in official Gazette provide for use of IT enabled systems for preservation of the details of the VAT invoice.

**Rule 11. Point of tax.-**

(1) The first point in the series of sales shall mean the first sale by a registered dealer in the State or such point in the series of sales as may be notified by the State Government.

(2) The last point in the series of sales shall be the sale in such series by a registered dealer to a consumer or to an unregistered dealer or to a registered dealer for purposes other than resale within the State or to a registered dealer who has opted for payment of tax under subsection (2) of section 3 or section 5 of the Act.

(3) The multiple point in the series of sales shall mean the sale in such series in the State by every registered dealer.

(4) The tax leviable under section 4 of the Act shall be at multiple points in the series of sales, unless otherwise specifically directed by the State Government by a notification,

(5) Notwithstanding any thing contained in sub-rule (1) to (4), different points in the series of sales for registered dealer or class of registered dealers, may be notified by the State Government.

7. अधिसूचना क्रमांक एफ.12(63)एफडी/टैक्स/2005–172 दिनांक 31.03.2006 निम्न प्रकार है:–

लगातार.....10

**FINANCE DEPARTMENT**
**TAX DIVISION**
**NOTIFICATION**
**Jaipur, March 31st, 2006**

S.O.472.-In pursuance of rule 11 of the Rajasthan Value Added Tax Rules, 2006, read with sub-section (1) of section 4 of the Rajasthan Value Added Tax Act, 2003, the State Government hereby directs that tax under section 4 of the Act, in respect of sales of Aviation Spirit, High and Light Speed Diesel Oil, and Petrol, shall be payable at the first point in the series of sales by a registered dealer in the State of Rajasthan subject to the following conditions, namely.-

(i) that the selling dealer shall issue invoice and not VAT invoice; and

(ii) that against invoice and not against VAT invoice.

This shall have effect from April 1, 2006

[No.F.12(63)FD/Tax/2005-172]
By Order of the Governor,

(Subir Kumar)
Deputy Secretary to Government

8. अपीलार्थी के विद्वान अभिभाषक द्वारा प्रस्तुत न्यायिक दृष्टान्तों का ससम्मान अध्ययन किया गया। तथ्यात्मक व विधिक भिन्नता के कारण न्यायिक दृष्टान्त लागू होने योग्य नहीं हैं।

9. विद्वान अभिभाषक अपीलार्थी द्वारा कथन किया गया कि राज्य सरकार की अधिसूचना दिनांक 09.03.2007 से डीजल को वेट अधिनियम की धारा 18(1)(ई) के सन्दर्भ में अधिसूचित किया गया है, जबकि इससे पूर्व डीजल को कच्चे माल के रूप में उपयोग लिये जाने पर आई.टी.सी. की देयता बनती है। इस सम्बन्ध में राज्य सरकार द्वारा वेट अधिनियम में दिनांक 09.03.2007 को किये गये संशोधन के बिन्दु संख्या 7 के अनुसार वेट अधिनियम की धारा 18 से सम्बन्धित किये गये संशोधन को दिनांक 01.04.2006 से प्रभावी किया गया है। उक्त संशोधन का संदर्भित अंश निम्न प्रकार है :–

**The Rajasthan Value Added Tax (Amendment) Act, 2007**
**(Act No. 3 of 2007**
**[Received the assent of the Governor on the 9th day of April, 2007]**

An Act further to amend the Rajasthan Value Added Tax Act, 2003.

Be it enacted by the Rajasthan State Legislature in the Fifty-eight Year of the Republic of India, as follows :-

लगातार.....11

7. Amendment of section 18, Rajasthan Act No. 4 of 2003 - In the existing clause (e) of sub-section (1) of section 18 of the principal Act, after the existing expression "raw material" and before the existing expression "in the manufacture" the expression, "except those as may be notified by the State Government." shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2006.

10. उपरोक्त समस्त तथ्यात्मक एवं विधिक विवेचन के पश्चात् यह निष्कर्षित किया जाता है कि वैट अधिनियम के प्रावधानों के तहत डीजल की खरीद पर आई.टी.सी. देने को निषिद्ध किया हुआ है अर्थात डीजल की खरीद पर चुकाये गये कर की आई.टी.सी. का दावा स्वीकार योग्य नहीं हो सकता है। अपीलार्थी व्यवहारी द्वारा क्रीत वस्तु को प्रयोग में लेने के तरीके से कोई अन्तर नहीं पड़ता है क्योंकि जब किसी वस्तु को विधि के प्रावधानों के द्वारा आई.टी.सी. देने के लिये निषिद्ध किया हुआ होने पर उसकी आई.टी.सी. अनुज्ञेय नहीं हो सकती है।

11. परिणामस्वरूप अपीलार्थी व्यवहारी की अपील अस्वीकार किये जाने योग्य होने के कारण अस्वीकार की जाती है।

12. निर्णय सुनाया गया।

20/10/2016

( मनोहर पुरी )
सदस्य

( खेमराज )
अध्यक्ष