www.taxguru.in

HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Civil Writ Petition No. 12445 / 2016

R.S. Infra-Transmission Ltd., A-241-242 (b) Road No. 6-D Vishwakarma Industrial Area Jaipur through its at present Managing Director Abhinav Gupta S/o Sh. Mahesh Chand Gupta.

...........PETITIONER

1.State of Rajasthan through its Secretary, Ministry of Finance, 1st Floor, Main Building, Government Secretariat, Jaipur, Rajasthan.

2.Department of Commercial Taxes, State of Rajasthan through its Commissioner, Kar Bhawan, Bhawani Singh Road, Ambedkar Circle, C-Scheme, Jaipur, Rajasthan

3.Department of Commercial Taxes, State of Rajasthan through its Assistant Commissioner/Commercial Taxes Officer, Circle Special-VIII, Jhalana Doongari, Jaipur, Rajasthan.

4.Department of Commercial Taxes, State of Rajasthan through its Assistant Commissioner/Commercial Taxes Officer, Circle Special-V, Jhalana Doongari, Jaipur, Rajasthan.

5.Tantia Enterprises, Flat no. T-224, Rangoli Garden, Maharana Pratap Marg, Near Vaishali Nagar, Jaipur, Rajasthan.

.............RESPONDENTS

For Petitioner(s) : Mr. Prateek Kasliwal with Ms. Gauri Jasana

For Respondent(s) : Mr. R.B. Mathur with Mr. K.D. Mathur & Mr. Prateek Kedawat

---

HON'BLE MR. JUSTICE K.S.JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Order

11/04/2018

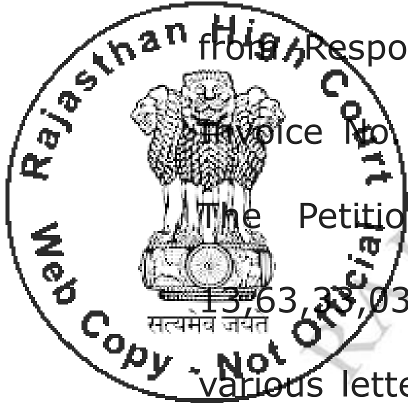
1. By way of this writ petition, the petitioner has approached this Court by challenging the provisions of VAT Act.

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

2.1 The facts of the case are that the petitioner is a dealer doing his business in the State of Rajasthan under the Companies Act, 1956 having its office at Jaipur.

2.2. The Petitioner is in the business of rolling MS/HT Billets Blooms into Angle, Structural Steels and other products, the petitioner in its business transaction has purchased raw materials from Respondent No. 5 vide various Invoices in the series of Invoice No. 87 to 311 starting from 05.07.2012 to 24.02.2013. The Petitioner Company had paid a total amount of Rs. 13,63,33,030/- inclusive of VAT. The said amount was paid vide various letter of credit, RTGS, cheque. The Petitioner paid a sum of Rs. 13,63,33,030/-, inclusive of all the taxes and VAT within which the amount of Rs.64,92,054/- was paid by the Petitioner on account of VAT calculated at the rate of 5%.

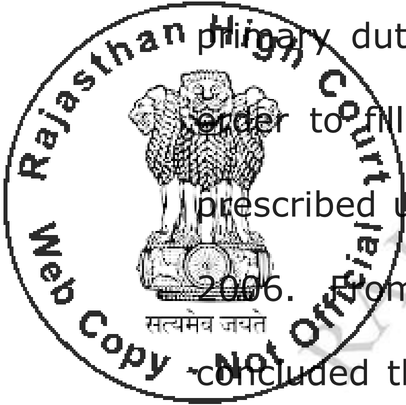


2.3. The petitioner was filing his quarterly and annual returns with the department on a regular basis for availment of Input Tax Credit, herein after referred to as "ITC" for the VAT amount which was paid to the Respondent No. 5. In fact, the returns were continuously filed for 3 years i e. for the FY 2011-2012, 2012-2013 & 2013-2014. The Petitioner was never questioned for the default in the VAT amount, it is after the completion of 3 years when the Respondent No. 4 construed a penal action by producing the show cause notice over the Petitioner by virtue of which it claimed that the amount of Rs.12,04,945/- is due after adjusting an amount of Rs.64,92,054/-. The amount of Rs.12,04,945/ cannot be demanded as the petitioner has already paid the same and has

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

the legal right to claim the input credit as per Section 18(2). The amount paid by the Petitioner on account of VAT was in the year 2012-2013 and the same seems not to have been deposited by the Respondent No. 5 before the department. The petitioner cannot be held liable for the wrongful and malafide acts of the Respondent No. 5. It was the Respondent No. 5 who had this primary duty to submit the VAT to the government treasury. In order to fill in the returns, the Petitioner had filed Form 7A as prescribed under Rule 19 and 19 (A) of the Rajasthan VAT Rules, 2006. From the above mentioned facts, it could be fairly concluded that the Petitioner cannot be held liable on account of non deposition of the amount paid by the Petitioner against VAT. The Respondents inaction and lackluster attitude in imparting the role as envisaged by the Act cannot be a ground to burden the by Petitioner disallowing the input credit. This is not justifiable on the part of Respondent No.4 to issue a show cause notice to the Petitioner without even going through the records and without confirming and verifying it from the Respondent No. 5 selling dealer's end.

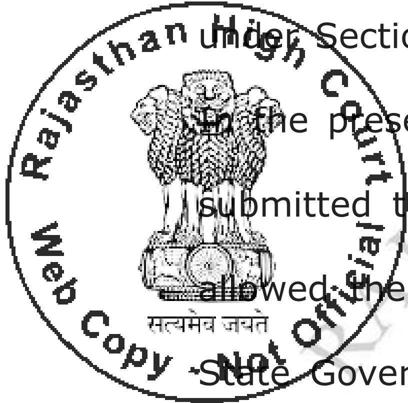


2.4. On 13.05.2016, the Petitioner company received a show cause notice from the Respondent No. 4 notifying that the amount of Rs. 12,04,945/- out of Rs. 64,92,054/- for which the Input Tax Credit was filed by the Petitioner has not been paid to the Department treasury by Respondent No. 5, the said amount was already paid by the Petitioner, it should have been paid to the government treasury but due to non-payment by the Respondent No. 5, there was a default in the payment of VAT amount and

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

hence, the show cause notice was issued and Input Tax Credit was denied to the Petitioner. It is shocking and surprising that the Petitioner had been cheated by the Respondent No. 5, and the amount had never been paid to the government treasury. With regards to this, the Petitioner had already filed a complaint against the Respondent No. 5 with Vishwakarma Police Station, Jaipur under Sections 406, 420, 465 and 468 of the Indian Penal Code. In the present case, the Petitioner though lawfully and faithfully submitted the VAT amount to the Respondent No. 5 is still not allowed the input tax credit. Also it is the primary duty of the State Government to check and verify the records on a regular basis maintained by its departments and set a procedure for the same, and here in the instant case, relevant point needs to be considered that the authority Respondent No. 4 appointed by the Department of Commercial Taxes, Jaipur, Rajasthan was negligent and lethargic in not looking into the matter and responded after 3 long years and it is because of the Section 18(2) under the Rajasthan VAT Act which provides Respondent No. 4 a remedy to cover up its sluggish acts.



3. Counsel for the petitioner contented that now the issues are covered by the Decision of Delhi High Court which is followed by the Punjab and Haryana High Court in **M/s Gherulal Bal Chand vs. State of Haryana and Anr., CWP No.6573/2007,** decided on 23.09.2011.

4. The Delhi High Court while considering the provisions of Section 9(2)(g) of the Delhi Value Added Tax, 2004 in case **On Quest Merchandising India Pvt. Ltd. And Ors. vs.**

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

Government of NCT of Delhi and Ors., W.P. (C) 4046/2013, decided on 26.10.2017 has considered the provisions. Wherein it has found that the Rule required to be laid down and while considering the matter observed as under:

> 24. On behalf of the Petitioners, the following submissions were made by Mr. N. Venkatraman, the learned Senior Counsel and Mr. Puneet Agrawal, Mr. Rajesh Jain and Mr. Rajesh Mahana, the learned counsel appearing for the Petitioners:
>
> "(i) The objective of the DVAT Act is to charge tax only on 'value additions' and to avoid a cascading effect of taxes. Section 9 (2) (g), however, treats both the 'guilty purchasers' and the 'innocent purchasers' at par whereas they constitute two different classes. Where the 'guilty purchasers' in collusion with the 'guilty seller' enter into a tacit agreement or understanding or arrangement to falsely claim ITC and cause loss of revenue, it is not as if the government is powerless to check such frauds. Section 40A of the DVAT Act has been specifically enacted for that purpose. Nevertheless, irrespective of whether the purchasing dealer is innocent, on account of subsequent conduct of the selling dealer, who has collected the VAT from the purchasing dealer and has failed to deposit it with the government or has failed to lawfully adjust it against his output tax liability, the purchasing dealer is made to suffer. This is violative of Article 14 of the Constitution inasmuch as it treats both the innocent purchasers and the guilty purchasers alike. In other words, it is submitted that by treating unequals equally the legislative measure is violative of Article 14 of the Constitution. Reliance is placed on the decision in K.T. Moopil Nair v. State of Kerala : AIR 1961 SC 552 and State of Kerala v. Haji and Haji : AIR 1969 SC378.
>
> (ii) Section 9 (2) (g) of the DVAT Act denies to a bona fide purchaser, the benefit of the ITC only because of the default of the selling dealer over whom such purchasing dealer has not control. This measure qua the purchasing dealer is arbitrary, irrational and unduly harsh and, therefore, violative of Article 14 of the Constitution. Reliance is placed on the decisions

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

in Commissioner of Customs, Amritsar v. Parker Industries : 2007 (207) ELT 658 (P&H) and Shanti Kiran India Pvt. Ltd. v. Commissioner, Trade and Tax Deptt. :(2013)57VST405(Delhi).

(iii) There are other statutory avenues available to the State to collect tax from the defaulting dealer. This includes recovery of the tax in case the dealer fails to deposit the same under Section 43 of the DVAT Act; forfeiture of security deposited under section 19 of DVAT Act read with Rule 22 of the DVAT Rules; recovery of tax as arrears of land revenue whereby the Commissioner prepares and issues to the defaulting selling dealer a recovery certificate and thereafter recovers the amount specified in the certificate by attaching the movable and immovable property of or even the arrest of the certificate-debtor; or appointing a receiver for the management of the movable and immovable properties of such certificate-debtor.

(iv) The only requirement of law, as far as the purchasing dealer wanting to avail the benefit of ITC is concerned, is that he has to make sure that the selling dealer is a registered dealer and has issued the tax invoice in compliance with the requirement of the DVAT Act and the Rules made thereunder. Once the purchasing dealer demonstrates that he has complied with such requirement, he cannot be denied the ITC only because the selling dealer fails to discharge his obligation under the DVAT Act. From the point of view of the Petitioners in the present case, all of them as purchasing dealers have complied with the requirement of DVAT Act and all of them have ensured that the purchases made by them are in compliance with the requirements of the DVAT Act for claiming ITC. Reliance is placed on the decisions in Corporation Bank v. Saraswati Abharansala : (2009) 19 VST 84 (SC); State of Punjab v. Atul Fasteners Ltd. : (2007) 7 VST 278 (SC) and Gheru Lal Bal Chand v. State of Haryana : (2011) 45 VST 195 (P&H).

(v) The condition under Section 9 (2) (g) of the DVAT Act that the selling dealer has 'actually deposited' should be read as selling dealer "ought to have deposited" tax. Alternatively, the expression 'dealer' occurring therein should be read down to exclude a purchasing dealer who, on his part, has duly complied with the requirements under the DVAT Act. Reliance is

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

placed on the decisions in Assistant Collector of Central Excise, Bombay v. The Elphinstone Spinning & Weaving Mills Company : AIR 1971 SC 2039 and Gurshai Saigal v. CIT: AIR 1963 SC 1062.

(vi) Reliance is also placed on the decisions in Bajaj Tempo Ltd. v. CIT : (1992) 3 SCC 78, Aidek Tourism Services Pvt. Ltd. v. Commissioner of Customs : (2015) 7 SCC 429 and Union of India v. Ranbaxy Lab. Ltd. : (2008) 7 SCC 502 to urge that the interpretation of Section 9 (2) (g) of the DVAT Act has to be in consonance with the object and purpose of the DVAT Act. It is argued that a pragmatic view must be taken and practical aspects considered before enforcing compliance. It is further urged that the ground realities of marketing and sales have to be considered while interpreting an exemption provision. It is pointed out that even if it is assumed that subsequent to the purchases made by the purchasing dealer, the registration of the selling dealer is cancelled, such cancellation cannot be given retrospective effect so as to deny the purchasing dealer the ITC in respect of the VAT paid by him.

(vii) Reliance is placed on the decisions in Mahadev Enterprise v. State of Gujarat : 2016 (92) VST 360 (Gujarat), Jinsasan Distributors v. CTO : (2013) 59 VST 256 (Madras) to urge that as long as there is no mismatch of Annexures 2A and 2B, ITC cannot be denied. Reliance is placed on the decision of this Court in Progressive Alloys (India) Pvt. Ltd. v. Commissioner of Trade & Taxes (decision dated 3rd February, 2016 in W.P. (C) No. 7434/2015) and Infiniti Wholesale Limited v. Assistant Commissioner of Tax : (2015) 82 VST 457 (Madras).

(viii) Penalty under Section 86 (10) of the DVAT Act cannot be imposed unless it is shown that the return filed is misleading or deceptive. When the buying dealer has no means to ascertain the fact of non-deposit by the selling dealer of the VAT collected from the purchasing dealer, it cannot be assumed that the purchasing dealer has deliberately failed to pay tax. Therefore, Section 86 (10) cannot be applied straightaway. Reliance is placed on the decisions in Commissioner of Sales Tax, U.P. v. Sanjiv Fabrics : (2010) 9 SCC 630, Jatinder Mittal Engineers and Contractors v.

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

Commissioner of Trade & Taxes : 2011 (46) VST 498 (Del) and Pentex Sales Corporation v. Commissioner of Sales Tax, Delhi : (2014) 67 VST 229 (Delhi).

(ix) The penalty under Section 86 (10) is not automatic and has to be preceded by the proper notice being served on the Assessee and an effective opportunity of being heard being given. Reliance is placed on the decision in Commissioner of Income Tax v. Manjunatha Cotton and Ginning Factory : [2013] 359 ITR 565 (Kar.) and Amrit Foods v. Commissioner (2005) 13 SCC 419."

Submissions on behalf of the Department

25. In reply, Mr. Satyakam, the learned Additional Standing Counsel for the Department, first referred to the decisions in Rajbala v. State of Haryana : (2016) 2 SCC 445 and Municipal Committee v State of Punjab (1969) 1 SCC 75 to urge that arbitrariness cannot be a ground for challenging the statute as being violative of Article 14 of the Constitution. He further submitted that mere hardship caused by the impossibility of compliance of the provisions cannot be a ground for striking down a statute.

31. Again, it is not as if the Department is helpless if the selling dealer commits a default in either depositing or lawfully adjusting the VAT collected from the purchasing dealer. There are provisions in the DVAT Act, referred to hereinbefore, which empower the Department to proceed to recover the tax in arrears from the selling dealer. There is also Section 40A, in terms of which, a purchasing dealer acting in connivance with a selling dealer can be proceeded against.

33. Indeed, what Section 9 (2) (g) of the DVAT does is give the Department a free hand in deciding to proceed either against the purchasing dealer or the selling dealer or even both when it finds that the tax paid by the purchasing dealer has not actually been deposited by the selling dealer with the Government or has not been lawfully adjusted against the selling dealer's output tax liability and correctly reflected in the return filed by such selling dealer in the respective tax periods. It uses the phrase, "dealer or class of dealers"

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

which could include either the purchasing dealer or the selling dealer. In the situation envisaged by Section 9 (2) (g) itself, clearly the defaulting party is the selling dealer. He has collected the VAT from the purchasing dealer and failed to deposit it with the Government or failed to lawfully adjust it against his output tax liability and has failed to correctly reflect that in his return. For all these defaults committed by the selling dealer, the purchasing dealer is expected to bear the consequence of being denied the ITC. It is this that is being questioned as violative of Article 14 of the Constitution.

34. First, there is the issue of Section 9 (2) (g) of the DVAT Act failing to distinguish between bona fide purchasing dealers and those that are not. While denial of ITC could be justified where the purchasing dealer has acted without due diligence, i.e. by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration, denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. This failure to distinguish bona fide purchasing dealers from those that are not results in Section 9 (2) (g) applying equally to both the classes of purchasing dealers. This would certainly be hit by Article 14 of the Constitution as explained in several decisions which will be discussed hereinafter.

39. Applying the law explained in the above decisions, it can be safely concluded in the present case that there is a singular failure by the legislature to make a distinction between purchasing dealers who have bona fide transacted with the selling dealer by taking all precautions as required by the DVAT Act and those that have not. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.

42. All this points to a failure to make a correct classification on a rational basis so that the denial of ITC is not visited upon a bonafide purchasing dealer. This failure to make a reasonable classification, does attract invalidation under Article 14 of the Constitution, as pointed out rightly by learned counsel for the Petitioners. This is also what weighed with the Court in Shanti Kiran India Pvt. Ltd. (supra) where it was observed as under:

> "In the present case, Section 9 (1) grants- input-tax credit to purchasing dealers. Section 9 (2), on the other hand lists out specific situations where the benefit is denied. The negative list, as it were, is restrictive and is in the nature of a proviso. As a result, this Court is of the opinion that the interpretation. placed by the Tribunal- that there is statutory, authority for granting input-tax credit only to the extent tax is deposited by the selling dealer, is unsound and contrary, to the, statute, It is also iniquitous because an onerous burden is placed on the purchasing dealer - in the absence of clear words to that effect in the statute to keep a vigil over the amounts deposited by the selling dealer. The court, does not see any provision or methodology by which the purchasing dealer can monitor the selling dealers behaviour, 'vis-à-vis the latter's VAT returns. Indeed, Section 28 stipulates confidentiality in such matters. Nor is this Court in agreement with the Tribunal's opinion that insertion of clause (g) to section 9 (2) is clarificatory. As observed earlier, Section 9 (2) is an exception to the general rule granting input-tax credit to dealers who qualify for the benefit. The conditions for operation of the exception are well defined. The absence of any condition such

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

as the one spelt out in clause (g) and its addition in 2010, rules out legislative intention of its being a mere clarification of the law which always existed."

46.6 In the present case, the conditions imposed for the grant of ITC are spelt out in Sections 9 (1) and (2) of the DVAT Act and have been adverted to earlier. The claim of the purchasing dealer in the present case is not that it should be granted that ITC de hors the conditions. Their positive case is that each of them, as a purchasing dealer, has complied the conditions as stipulated in Section 9 and therefore, cannot be denied ITC because only selling dealer had failed to fulfil the conditions thereunder. More importantly, the Court finds that there is no provision in the MVAT Act similar to Section 40A of the DVAT Act. Section 40A of the DVAT Act takes care of a situation where the selling dealer and the purchasing dealer act in collusion with a view to defrauding the Revenue. In fact, the operative directions in Mahalaxmi Cotton Ginning Pressing and Oil Industries (supra) indicate that such a measure was suggested by the State Government itself to go after defaulters, i.e. selling dealers failing to actually pay the tax. The Department there undertook to upload on its website the details of the defaulting dealers. It was further undertaken that once there was a final recovery of the tax from the selling dealer, refund would be granted to the purchasing dealer.

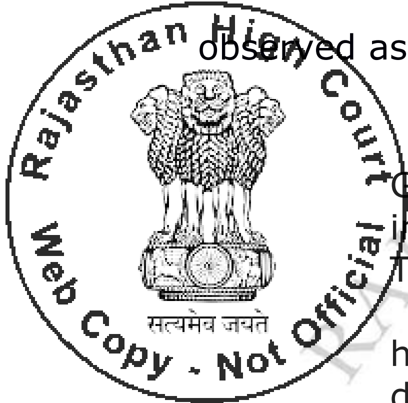
48. The decision of the Supreme Court in Corporation Bank (supra) applies to the present case on all fronts. The Court explained there that the selling dealer collects tax as an agent of the Government. Therefore, the bona fide buyer cannot be put in jeopardy when he has done all the law requires him to do so. The purchasing dealer has no means to ascertain and secure compliance by the selling dealer. Again, in Central Wines, Hyderabad (supra) the Supreme Court inter alia observed that "the Seller acts as an agent of the buyer while collecting the tax".

50. The offending part of Section 9 (2) (g) of the DVAT Act is the expression 'the dealers or class of dealers' occurring therein which, as it presently stands, makes no distinction between selling and purchasing dealers and further between bona fide purchasing dealers and those not bonafide."

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

5. Learned counsel for petitioner contended that in view of the decision of Delhi High Court against which SLP – **Commissioner of Trade and Taxes Delhi vs. Arise India Ltd., Special Leave to Appeal (C) No.36750/2017** was preferred and the same was dismissed on 10.01.2018 wherein it has been observed as under:



> "On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.
>
> Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and there are Signature Not Verified Digitally signed by DEEPAK MANSUKHANI Date: 2018.01.10 17:01:53 IST Reason:SIGNER CARD OF MR. DEEPAK MANSUKAHNI some of the cases where the purchase transactions are not bonafide IS BEING USED BY MR. O.P. SHARMA like the present case and those cases ought to have been remitted back to the competent authority. Learned Additional Solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.
>
> Pending application(s), if any, stand disposed of."

6. Counsel for respondent has strongly relied upon the Bombay High Court judgment and contended that the Rule 18 which reads as under:

> "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-

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

rule (4) of rule 38, However, claim of input tax credit of the additional tax deposited may be allowed on the basis of VAT invoice which has been issued subsequently in compliance of the decision of any competent court or authority, showing the tax at higher rate. The extent of input tax credit available to a registered dealer shall be equal to the amount of tax paid on purchases in the State as evident from the VAT invoice, subject to the other provisions of this rule and the following conditions:–

(i) that such dealer has maintained a true and correct separate account of his purchases against VAT Invoices in Form VAT-07 and submits the summary thereof in Form VAT-07A, along with return prescribed in rule 19.

(ii) that such dealer has maintained a true and correct separate account of his sales in Form VAT-08 and submits the summary thereof in Form VAT-08A, along with return prescribed in rule 19."

and they are taking care of purchasing dealer and the view taken by the Bombay High Court in case of **M/s. Mahalaxmi Cotton Ginning Pressing and Oil Industries, Kolhapur vs. The State of Maharashtra & Ors, (2012) 51 VST 1 (Bom),** where in it has been observed as under:

"51. This case highlights the complexity of the issue with which both the legislature and tax administrators must grapple in devising a tax regime governed by the Value Added Tax. The legislature has performed a balancing exercise between the need on the one hand of ensuring the interests of the ultimate consumer by obviating a cascading tax burden and on the other hand, securing governance under rule of law principles which promote transparency and certainty while at the same time protecting the legitimate revenues of the State. The Value Added Tax regime has replaced a single point levy with a multiple point levy in which every dealer is a vital link in the levy and collection of tax. As the number of dealers has increased manifold, conventional systems of tax administration have to be replaced by web based electronic systems. The system which the

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

administrator must devise must continuously evolve both with a view to simplify procedures and to make the process including that relating to beneficial provisions such as set off and refund objective and transparent. The judgments of the Supreme Court, including in R.K. Garg, recognise the latitude which the law confers upon the Legislature and the executive to experiment with new systems in cases involving fiscal and economic policy. Systems have to evolve as experiences result in shared learning and as technology keeps abreast of changing needs.

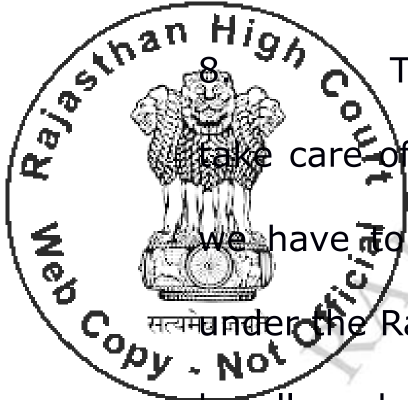
52. In the view which we have taken in these proceedings, the constitutionality of the provision of Section 48(5) is upheld. Similarly Section 51(7) which requires an application for refund and specifies the period within which an application can be made, cannot be assailed as being invalid. Regulating the process of refunds is as much within the province of a legitimate tax enactment and the legislature is within its power in requiring a refund to be applied for within a reasonable period. The right to obtain a set off is a right conferred by statute and the legislature while recognizing an entitlement to a set off in certain circumstances is lawfully entitled to prescribe the conditions subject to which a set off can be obtained. If the legislature, as in the present case, prescribes that a set off should be granted only to the extent to which tax has been deposited in the treasury on the purchase of goods, it is within a reasonable exercise of its legislative power in so mandating. This does not offend Article 14. A plea of hardship cannot result in the invalidation of a statutory provision in a fiscal enactment which is otherwise lawful. At the same time, we have set out in detail the assurance which has been placed before the Court by the State Revenue in the present case of the steps that would be taken to pursue recoveries against selling dealers who have either not filed returns or, having filed returns have not deposited the tax collected from the purchasing dealer in whole or in part. For the reasons indicated earlier, we do not find any merit in the challenge to the provisions of Section 48(5) of the MVAT Act, 2002. We decline to accede to the prayer for reading down the provisions of Section 48(5). The order of assessment is subject to the remedy of an appeal in the course of which it would be open to the

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

Petitioner to pursue the remedy available in law. As regards the recoveries to be made from the selling dealers, the State government and the sales tax authorities shall abide by the assurance and statement recorded in the judgment. The Petition shall accordingly stand disposed of. There shall be no order as to costs."

7. We have heard learned counsel for both the sides.



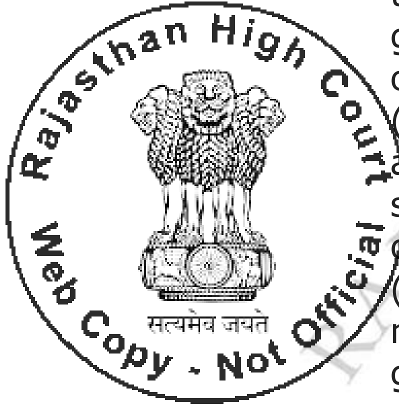
8. The contention of Mr. R.B. Mathur is that Rule 18 will take care of the situation. However, while considering the matter, we have to look into the matter whether the benefit envisaged under the Rajasthan VAT Act especially under sub-Section (1) shall be allowed only after verification of deposit of the tax payable by the selling dealer in the manner as notified by the Commissioner. We are in complete agreement that it will be impossible for the petitioner to prove that the selling dealer has paid tax or not as while making the payment, the invoice including tax paid or not he has to prove the same and the petitioner has already put a summary on record which clearly establish the amount which has been paid to the selling dealer including the purchase amount as well as tax amount. In that view of the matter, we are of the opinion that Rule 18 if it is accepted, then the respondents will to take undue advantage and cause harassment. Thus, we are of the opinion that instead of holding provisions Section 18 to hold to be ultra virus, we read down the provisions of Rule 18 as under:

"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

(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

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 in manufacture of goods other than exempted 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 input tax credit under sub-section (1) shall be allowed only after verification of the deposit of tax payable by the selling dealer in the manner as may be notified by the Commissioner.".
(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
(iia) of goods taxable at first point in the series of sales, from a registered dealer who pays tax at the first point; Explanation.- For the purpose of this clause, "first point in the series of sales" means the first sale made by a registered dealer in 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

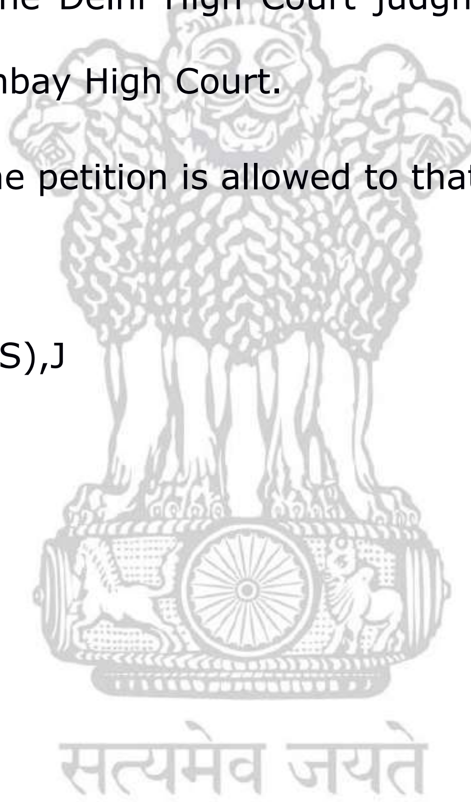
(Downloaded on 07/12/2019 at 12:52:34 PM)

www.taxguru.in

(v) where the purchasing dealer fails to prove the genuineness of the purchase transaction [xxx], on being asked to do so by an officer not below the rank of Assistant Commercial Taxes Officer authorised by the Commissioner.
(3a) Notwithstanding anything contained in this Act, where any goods purchased in the State are subsequently sold at subsidized price, the input tax allowable under this section in respect of such goods shall not exceed the output tax payable on such goods."
(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."

9. The purchasing dealer has to only prove that while making the payment, he takes the purchased amount. To that extent, we follow the Delhi High Court judgment and not accept the view of the Bombay High Court.

10. Hence the petition is allowed to that extent.



(VIJAY KUMAR VYAS),J (K.S.JHAVERI),J

Chauhan/62

(Downloaded on 07/12/2019 at 12:52:34 PM)