

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Sales Tax Revision Petition No. 1/2015

Assistant Commissioner, Commercial Taxes Department,
Circle-G, Jaipur

----Petitioner

Versus

M/s Asha Oil Traders A-11, Chandpole Nai Anaj Mandi, Jaipur
Rajasthan

----Respondent

For Petitioner(s) : Mr. Ayush Singh Advocate on behalf
of Mr. Punit Singhvi Advocate.

For Respondent(s) : Mr. V.K. Gogra Advocate.

**HON'BLE MR. JUSTICE MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE BIRENDRA KUMAR**

Order

12/01/2022

Heard on admission.

This revision petition has been filed proposing following
substantial questions of law:-

“(i) Whether in the facts and circumstances of the case of Rajasthan Tax Board was justified in law in setting aside the tax, interest and penalty.

(ii) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in deleting the Tax, Interest and penalty despite of the fact that the Input Tax Credit claimed by the petitioner was found to be on the basis of false/forged VAT invoices issued by a dealer who has not deposited the tax and its registration was cancelled u/s 16(4) (g) of the Act.

(iii) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in holding that the respondent cannot be hold responsible for the amount not deposited by the selling dealer and allowed the benefit of Input Tax Credit which ultimately will



amount to double jeopardy to the State as the selling dealer has not deposited the tax whereas subsequent dealer has claimed benefit of Input Tax Credit.

(iv) Whether in the facts and circumstances of the case the order of the Rajasthan Tax Board was justified and is not contrary to the provisions of section 18(2) of the RVAT Act.

(v) Whether in the facts and circumstances of the case the Rajasthan Tax Board was justified in law in deleting the penalty u/s. 61(2)(a) of the Act despite of the facts that the respondent assessee has claimed benefit of Input Tax Credit on the basis of false/forged VAT invoices.”

The argument of learned counsel for the revenue is that in cases where the registered seller is found to have obtained a forged registration as dealer and it is found that such person has not paid any tax to the department, recovery could always be made from the buyer. According to him, not only tax but interest and penalty is also leviable.

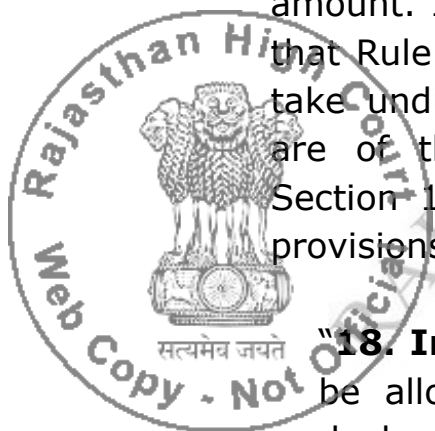
Further submission is that Input Tax Credit could not be claimed by the assessee as the same is raised on false/forged VAT invoices issued by the dealer, who never deposited the tax and where registration itself has been cancelled.

The questions of law which relate to one seminal issue, as argued by learned counsel for revenue are no longer as *res-integra*. A Division Bench of this Court in the case of **R.S. Infra-Transmission Ltd Versus State of Rajasthan and Others, D.B. Civil Writ Petition No.12445/2016**, decided on 11.04.2018 relying upon the decision rendered by the other High Courts and considering views taken by different High Courts held as below:-

“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 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

(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.”

In taking this view, this Court relied upon the judgment of the High Court of Delhi in the case of **Arise India Limited & Others Versus Commissioner of Trade & Taxes, Delhi and Others, W.P.(C) No.2106/2015**, decided on 26.10.2017.

In another decision of this Court in the case of **Assistant Commissioner, Commercial Tax, Circle-B, Kota (Raj.)**



**Versus M/s. Trilokchand Bharat Kumar, Bhamashah Mandi,
Kota The Rajasthan Tax Board, Ajmer, S.B. Sales Tax
Revision Petition No.115/2011 and connected matters,**

decided on 29.09.2016, the view taken as above has been reiterated as below:-

“10. It may be that M/s Arvind Traders and M/s Nakoda Traders, Kota, have been found to be non genuine or bogus by the Revenue Authorities, but at a later point of time, which is admitted in the instant case. The fact remains that the transaction of purchase/sale is prior to 31.3.2002, at that point of time both the firms were having valid registration certificate. Therefore, in my view the AO was not justified in holding or observing about misuse of declaration form. Admittedly, both the Appellate Authorities have come to a finding of fact that the registration was in force upto the period ended on 31.3.2002. Not only that, all the transactions have been found to be recorded in the books of account and both the Appellate Authorities have come to a concurrent finding that not only the transactions were recorded but all the payments were by account payee cheques, though it may not be relevant and may not be sacrosanct, but this finding is sufficient to hold in favour of the assessee that atleast in the instant case the registration was valid and in force and cancelled much later than the transactions having taken place in the instant case.

11. It would be appropriate to quote para 5 of the judgment rendered by the apex court in the case of Suresh Trading Company (supra) :-

“In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered



dealers to act upon the strength of registration certificates.”

12. This court in the case of M/s Vardhman Mills (supra) also took into consideration identical facts and held that retrospective cancellation of registration of purchasing dealer does not affect the right of selling dealer for deduction.

13. The judgment in the case of Infinity Wholesale Limited (supra) of the Madras High Court, is also on the same lines and supports the claim of respondent assessee.”

Therefore, we are of the considered view that the issue raised in this petition has already been settled by this Court in more than one decision.

Learned counsel for the revenue could not bring to the notice of this Court any different view expressed by the Apex Court on the issue.

In view of the above, no substantial question of law arises for consideration in this petition.

Revision petition is, therefore, dismissed at the stage of admission.

(BIRENDRA KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),J

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