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Court No. - 2

Case :- SALES/TRADE TAX REVISION No. - 313 of 2022

Revisionist :- M/S SBW Udoyg Ltd.

Opposite Party :- The Commissioner Commercial Tax

Counsel for Revisionist :- Suyash Agarwal, Sr. Advocate

Counsel for Opposite Party :- C.S.C., B.K. Pandey, ACSC

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Rakesh Ranjan Agarwal, learned Senior Advocate, assisted by Shri Suyash Agarwal and Shri Sushil Kumar Agrawal, learned counsel for the revisionist and Shri B.K. Pandey, learned ACSC for the opposite party.
2. With the consent of the learned counsel for the parties, the instant revision is being decided at the admission stage itself.
3. The present revision has been filed against the impugned order dated 21.07.2022 passed by the Commercial Tax Tribunal, Allahabad Bench – I, Allahabad in Second Appeal No. 33 of 2022 for the Assessment Year 2013-14 under section 28(2) of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as, '**the UP VAT Act**').
4. The following questions of law have been raised in the instant revision:-

“(i) Whether on the facts and circumstances of the case the tribunal was correct in not adjudicating the issue that the assessing officer did not have the jurisdiction to travel beyond the specific order of remand by the appellate authority when he was bound by the direction made in the appellate order dated 24.10.2019.

(ii) Whether having regard to the language of the remand order of the appellate authority, the assessing authorities was competent to examine the same issue afresh and redetermine the question about reversal of ITC closing stock of Lubricant as on 10.01.2014, which has become final

between the parties, especially when the department did not challenge the remand order dated 24.10.2019, before Tribunal.

(iii) Whether the tribunal was correct to affirm the orders of the authorities below applying the Commissioner's Circular number 1314115 dt. 20.01.2014 which is not binding on the assessee especially when the remand order has already attained finality.

(iv) Whether in the alternative, the tribunal was correct hold that ITC on the closing stock in lubricant 10.01.2014 as per Notification N.KA. NI-2-42/XI-9(1)/2008-UPAct-5-2008-order-(108)-2014 dated 10.01.2014 was rightly reversed, ignoring Rule 21(11) of UP VAT Rules as neither the lubricant was declared exempt u/s 7 of the act nor has been included in Schedule – 1 as it is only declared as Non VAT goods and still taxable @ 21% at the point of M or I.”

5. Learned senior counsel for the revisionist submits that for the Assessment Year 2013 – 14, the revisionist carried on the business of manufacture and sale of *bidi*, pocket cooked foods, tea, cold-drinks, imported matchbox, etc. as well as purchase and sale of lubricants, dry-fruits, khowa, etc. The dispute in the present case only relates to reversal of Input Tax Credit on lubricant. He further submits that in view of the notification dated 10.01.2014, lubricant was classified as VAT goods in the hand of manufacturer or importer. The Department claimed that ITC in relation to lubricants was required to be reversed and therefore, it coerced the applicant into depositing an additional amount of Rs. 29,81,445/-, which was deposited under protest.
6. Thereafter, the assessment order was passed on 30.01.2016 reversing the amount of Rs. 29,81,445/- from the total ITC earned. Against the assessment order dated 30.01.2016, the applicant preferred an appeal, which was allowed vide order dated 24.10.2019 recording a finding that the ITC in relation to lubricants cannot be reversed. The case was remanded with a direction for the purpose of calculation of ITC, which should not have been reversed. He further submits that the Assessing Officer did not comply with the direction given in the order of the

Appellate Authority dated 24.10.2019. But, vide order dated 31.10.2020, the Assessing Officer, on the basis of the circular of the Commissioner dated 20.01.2014, redetermined the question about the reversal of ITC on closing stock of lubricants, when this issue had already been settled in the remand order. Aggrieved by the said order, the applicant preferred an appeal, which was dismissed vide order dated 21.01.2022. The applicant challenged the order dated 21.01.2022 by preferring second appeal before the Commercial Tax Tribunal, which has also been dismissed vide impugned order dated 21.07.2022. Hence, this revision.

7. Learned senior counsel for the revisionist further submits that the authority cannot go beyond the direction issued by the appellate court in the order dated 24.10.2019. He further submits that after remand of the matter, instead of complying with the specific direction, the assessing authority has passed the order dated 31.10.2020 in violation of the directions issued.
8. He further submits that section 13(1)(a) of the VAT Act does not contemplate reversal of ITC, nor rule 21(q) of the Rules framed under the VAT Act contemplates the same. He further submits that when the lubricant was purchased, it was VATable goods and therefore, merely because of notification dated 10.01.2014, where the same has become non VAT goods for traders, will not disentitle the revisionist from claiming ITC, which was paid while purchasing the same.
9. He further submits that section 13(1)(a) and Rule 21(q) do not give any power to the authorities to reverse the ITC and therefore, the orders passed by the authorities below are bad. He further submits that the circular dated 17.01.2014 does not authorize the authority for reversal of ITC, but the same has wrongly been done without following the due procedure of law.
10. In support of his submissions, he has relied upon the judgements of this Court as well as the Apex Court in *M/s Guru Nanak Brick*

Fields Vs. CST [1987 UPTC 512], *CST Vs. Babu Lal Parmanand, Jhansi* [1981 UPTC 204], *M/s PNC Construction Company Limited Vs. State of U.P. & Others* [2002 UPTC 262], *Authorized Officer (Law Reforms) Vs. M.M. Krishnamurti Chetty* [(1998) 9 SCC 138], *Nain Singh Vs. Kunwarjee & Others* [(1970) 1 SCC 732], *M/s Kumar Motors, Bareilly Vs. State of U.P. & Others* [1994 UPTC 68], *M/s Mercury Laboratories Pvt. Ltd. Vs. State of U.P. & Others* [2000 UPTC 82], *M/s Goodage Rubber Works Vs. State of U.P. & Others* [2003 NTN (23) 553], *Gorie Gauri Naidu (Minor) & Another Vs. Thandrothu Bodemmaand & Others* [(1997) 2 SCC 552], *Daryao & Others Vs. State of U.P. & Others* [AIR 1961 SC 1457], *Pandinjarekkara Agencies Limited Vs. State of Kerala & Others* [(2008) 3 SCC 597] and *CST Vs. Indra Industries* [(2009) 9 SCC 66].

11. Per contra, learned ACSC supports the impugned orders and submits that the first appellate authority has remanded the matter with a direction to pass an order in accordance with law. He further submits that it is incorrect on the part of the revisionist to argue that there was a specific direction. He further argues that on perusal of the order of the first appellate authority, it only records the submissions made on behalf of the revisionist and after recording the argument/submission, the matter was remanded with a clear direction to decide the issue of reversal of ITC after due inquiry and in accordance with law. He further submits that it was an open remand order without any direction.
12. He further submits that vide circular dated 17.01.2014, the lubricant became non VAT goods. For claiming the ITC, section 13(1)(a) of the VAT Act comes into play, which prohibits non VATable goods. Once the goods have become non VAT and the revisionist claimed ITC on the same, has rightly been reversed.

13. He further submits that the Full Bench of this Court in *M/s Ram Dayal Harbilas Vs. the Commissioner of Sales Tax* [(1979) 44 STC 84] has specifically suggested that if the matter has been remanded by the first appellate authority, then the authority can pass an order taking into consideration all the materials available on record afresh and therefore, it cannot be said that the impugned order is bad or illegal.
14. After hearing learned counsel for the parties, the Court has perused the record.
15. For deciding the controversy in hand, relevant sections and rules are required to be gone into.
16. Section 13(1)(a) of the VAT Act reads as under:-

(1) Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of taxable goods purchased from within the State and mentioned in such clauses, subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause:

(a) Subject to conditions given in column 2, every dealer liable to pay tax, shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such taxable goods are purchased on or after the date of commencement of this Act, be allowed credit of the amount, as input tax credit, to the extent provided in column 3 of the table below:

S/No.	Conditions.	Conditions Extent of amount of input tax credit.
1	If purchased goods are re-sold- (i) inside the State, or (ii) in the course of inter-state trade or commerce; or (iii) in the course of the export of the goods out of the territory of India.	Full amount of input tax

17. Bare reading of the aforesaid provision makes it clear that the ITC can be claimed on all taxable goods, except non VAT goods as per the table.

18. Section 14 of the VAT Act reads as under:-

“14. Reverse input tax credit:

(1) Consistent with the provisions of this Act, the State Government may prescribe the circumstances in which and the goods in respect of which input tax credit shall be neither claimed nor allowed.

(2) Where, in respect of any goods, a dealer has already claimed input tax credit against the provisions of this Act or the rules framed there under or has wrongly claimed input tax credit in respect of any goods, benefit of input tax credit to the extent it is not admissible, shall stand reversed and such amount of reverse input tax credit shall be deducted from the amount of input tax credit already claimed by the dealer in the tax period in which event giving rise to reverse input tax credit has occurred:

Provided that where event, giving rise to reverse input tax credit, comes to the notice of the dealer after the tax return, for the tax period in which such event has occurred, has been submitted, the dealer shall be liable to pay such amount of reverse input tax credit within thirty days after the event comes to the notice of the dealer, along with simple interest at a rate of fifteen percent per annum for the period commencing on the date following the last date prescribed for submitting tax return of the tax period in which event has occurred and ending on the date on which amount has been deposited.”

19. Bare perusal of the aforesaid provision shows that the dealer, who has already claimed ITC wrongly in respect of any goods, benefit of ITC credited to that extent shall stand reversed.

20. Further, rule 21(1)(a) of the Rules framed under the VAT Act reads as under:-

21. Input Tax Credit not to be allowed in certain cases:-

(1) No credit of any amount of input tax shall be allowed in respect of goods which-

(q) are taxable goods mentioned or described in column (2) of Schedule-IV;

21. Sub-rules (1), (2) & (3) of Rule 22 of the Rules framed under the VAT Act read as under:-

“22. Computation of amount of reverse input tax credit by a trader:-

(1) Where a dealer, who carries on exclusive business of purchase and re-sale of goods (hereinafter in this rule referred to as the trader) and who has claimed input tax credit of full amount of input tax in respect of any goods, uses, consumes, disposes of or dispossesses such goods in a manner in which he either is not entitled to claim any amount of input tax credit or is entitled to claim input tax credit of an amount which is lesser than the amount of input tax, shall compute amount of reverse input tax credit in respect of such goods.

(2) Amount of reverse input tax credit, in respect of any quantity or measure of any goods in respect of which a trader has not been entitled to claim any amount as input tax credit, shall be equal to the amount of input tax in respect of such quantity or measure of such goods.

(3) Amount of reverse input tax credit, in respect of any quantity or measure of any goods which have been consigned by the trader outside the State otherwise than by reason of an inter-State sale, shall be computed using the expression;

$$P \times R / 100$$

Where, in respect of quantity or measure of goods consigned outside the State:-

(i) *P* is the purchase price, according to the tax invoice or purchase invoice in respect of which input tax credit has been claimed of full amount of input tax; and

(ii) *R* is rate provided under sub-section (1) of section 8 of Central Sales Tax Act, 1956.”

22. The relevant paragraphs of circular dated 17.01.2014 are also quoted hereinafter for a ready reference:-

“शासन द्वारा शासकीय अधिसूचना सं० क०नि०-2-42/ग्यारह-9(1) 2008- यू.पी. एक्ट-5-2008-आर्डर-(108)-2014 दिनांक 10 जनवरी, 2014 द्वारा लुब्रीकेन्ट्स को उ०प्र० मूल्य संवर्धित कर अधिनियम, 2008 के *Schedule-IV* में प्रख्यापित करते हुए इस पर निर्माता/आयातकर्ता के बिन्दु पर करदेयता अवधारित कर दी गयी है। यह करदेयता कमिश्नर वाणिज्य कर द्वारा अवधारित प्रमाण-पत्र के विरुद्ध निर्माताओं

को बिक्री किए जाने की दशा में 5 प्रतिशत तथा इससे पृथक को बिक्री किए जाने की दशा में 21 प्रतिशत की दर से अवधारित की गयी है।

उक्त के संबंध में लुब्रीकेन्ट्स का जो स्टॉक दिनांक 10.1.2014 को संबंधित व्यापारियों के पास आरम्भिक स्टॉक के रूप में था उसकी बिक्री किए जाने पर करदेयता की स्थिति निम्नवत् स्पष्ट की जाती है—

उपर्युक्त शासकीय विज्ञप्ति के द्वारा लुब्रीकेन्ट्स पर करदेयता का बिन्दु निर्माता या आयातकर्ता (*Manufacture or Importer*) अवधारित कर दिया गया है। इस प्रकार अब लुब्रीकेन्ट्स पर करदेयता इसकी निर्माता या आयातकर्ता द्वारा बिक्री किए जाने के बिन्दु पर ही होगी। अन्य किसी बिन्दु पर यह कर देय नहीं होगा साथ ही करदेयता एकपदीय होगी।

ऐसा ट्रेडर जिसके द्वारा लुब्रीकेन्ट्स की खरीद प्रान्त के ही अन्दर से किसी पंजीकृत व्यापारी के की गयी, उसके पास जो दिनांक 10-1-2014 के आरम्भ में स्टॉक है उसके संबंध में वस्तुस्थिति यह है कि ऐसा व्यापारी उ०प्र० मूल्य संवर्धित कर अधिनियम, 2008 की धारा-2 की उपधारा (u) में परिभाषित “Manufacturer” की परिधि में नहीं आता है क्योंकि उसके द्वारा ऐसा लुब्रीकेन्ट स्वयं किसी निर्माण के प्रोसेस द्वारा नई कमोडिटी के रूप में प्राप्त नहीं किया गया है साथ ही ऐसा व्यापारी उ०प्र० मूल्य संवर्धित कर अधिनियम, 2008 की धारा-2 की उपधारा (o) में परिभाषित “Importer” की श्रेणी में भी नहीं आता है क्योंकि उसके द्वारा लुब्रीकेन्ट का आयात प्रान्त बाहर से करते हुए उसकी प्रथम बिक्री निष्पादित नहीं की जा रही है। अतः ऐसे व्यापारी द्वारा दिनांक 10-1-2014 को प्रान्तीय पंजीकृत व्यापारियों से क्रय किए गए लुब्रीकेन्ट के उपलब्ध स्टॉक की अग्रेतर बिक्री की जाएगी तो उस लुब्रीकेन्ट पर उपर्युक्त शासकीय अधिसूचना दिनांक 10-1-2014 द्वारा अवधारित करदेयता के बिन्दु के परिप्रेक्ष्य में कोई करदेयता नहीं होगी। परन्तु चूँकि उसके द्वारा यह अग्रेतर बिक्री नान-वैट गुड्स की निष्पादित की जाएगी अतः ऐसे लुब्रीकेन्ट के संबंध में जो इनपुट टैक्स क्रेडिट का लाभ उसके द्वारा लिया गया है उसे रिवर्स किया जाएगा और उसकी ऐसी राशि की देयता होगी। यह वस्तुस्थिति उ०प्र० मूल्य संवर्धित कर अधिनियम की धारा-13 की उपधारा (1) के क्लॉज (a) तथा उ०प्र० मूल्य संवर्धित कर नियमावली, 2008 के नियम 21 के उपनियम (1) के क्लॉज (q) के उपर्युक्त वर्णित प्राविधानों से स्वतः स्पष्ट है। ”

23. The aforesaid circular provides that with effect from 10.01.2014, the lubricant become VATable goods only at the hand of the manufacturer or importer. Further, so far as trader is concerned, it becomes non VATable goods at their end.

24. Therefore, on the above law and the circular, the present controversy is to be looked into.
25. It is admitted between the parties that the dispute is with regard to reversal of ITC to the tune of Rs. 29,81,445/-. The thrust of the argument made on behalf of the revisionist that by order dated 24.10.2019, the first appellate authority remanded the matter with certain directions and the assessing authority, being subordinate to the Additional Commissioner is bound by such directions. For the conveyance, the relevant part of the order dated 24.10.2019 is quoted below:

अपीलकर्ता द्वारा सुनवाई के समय प्रस्तुत तर्कों एवं अपील मेमो तथा पत्रावली/आदेश का अवलोकन किया गया। कर निर्धारण अधिकारी द्वारा अपीलार्थी का कर निर्धारण आदेश वर्ष 2013-14 पारित करते समय लुब्रीकेन्ट आयल का दिनांक 10.01.2014 को अवशेष अन्तिम स्टॉक पर 14 प्रति० की दर से रु० 2981444.38 की आई०टी०सी० रिवर्स की गयी है। कर निर्धारण अधिकारी द्वारा आई०टी०सी० रिवर्स किये जाने का कारण यह बताया गया है कि दिनांक 10-01-2014 को लुब्रीकेन्ट नॉन वैट हो जाने के उपरान्त अपीलार्थी के इस स्टॉक पर आई०टी०सी० देय नहीं रह जाती है। अपीलार्थी द्वारा मेरे समक्ष उपस्थित होकर अपील मेमो में देय तथ्यों को दोहराया एवं कहा गया कि कर निर्धारण अधिकारी द्वारा उक्त देय आधार पर आई०टी०सी० रिवर्स की गयी है। दिनांक 10.01.2014 को लुब्रीकेन्ट का स्टॉक शेष रहा है। उत्तर प्रदेश मूल्य संबंधित अधिनियम एवं उसके अन्तर्गत बनायी गयी नियमावली का नियम 21 में इस प्रकार के स्टॉक पर आई०टी०सी० के मामले में आई०टी०सी० अनुमन्य नहीं किये जाने की ऐसी कोई व्यवस्था नहीं है, क्योंकि नियम 21 (11) उन मामलों में इनपुल टैक्स क्रेडिट अनुमन्य न किये जाने की व्यवस्था की गयी है जिसमें धारा-7 के अन्तर्गत कोई वस्तु करमुक्त हो जाती है अथवा अनुसूची 1 में शामिल होने के कारण करमुक्त हो जाती है। अपीलार्थी का कथन है कि लुब्रीकेन्ट पहले भी करयोग्य था जब वैट के अन्तर्गत था बाद में नॉनवैट गुड्स की श्रेणी में आ जाने पर भी करमुक्त की श्रेणी में नहीं है। दिनांक 11.01.2014 से लुब्रीकेन्ट को अनुसूची 4 के अन्तर्गत नॉनवैट गुड्स में कर दिया गया तथा इस पर 21 प्रतिशत की दर करदेयता निर्धारित कर दी गयी है। इस प्रकार लुब्रीकेन्ट पहले वैट में होने पर भी करयोग्य था और बाद में नॉनवैट की श्रेणी में होने पर भी करयोग्य रहा है। अतः कर निर्धारण अधिकारी द्वारा लुब्रीकेन्ट पर आर०आई०टी०सी० किया जाना त्रुटिपूर्ण है। ऐसी परिस्थिति में पारित आदेश को उचित प्रकार से पारित आदेश नहीं कहा जा सकता है। अतः प्रश्नगत कर निर्धारण आदेश अपास्त किया जाता है तथा कर निर्धारण आदेश पारित करते समय अपीलार्थी

से दि० 10.01.2014 को लुब्रीकेन्ट के अन्तिम स्टॉक को गणना चार्ट के अनुसार ऑकलित आर०आई०टी०सी० को समाप्त करने की कार्यवाही उपरोक्त निर्देशों के अनुसार करें। अतः प्रश्नगत वाद कर निर्धारक अधिकारी को उक्त निर्देशों के अनुपालन में पुनः कर निर्धारण हेतु प्रतिप्रेषित किया जाता है।

आदेश

अपील संख्या - ALL1 /0329/19 स्वीकार की जाती है तथा कर निर्धारक अधिकारी द्वारा उ०प्र० वैट अधिनियम, 2008 की धारा 28(2)(i) के अंतर्गत दि० 30.01.2016 को पारित आदेश को अपास्त किया जाता है तथा ऊपर दिए गए निर्देशों के क्रम में कर निर्धारक अधिकारी को वाद इस निर्देश के साथ प्रतिप्रेषित किया जाता है कि अपीलकर्ता को सुनवाई का पर्याप्त अवसर देते हुए आर०आई०टी०सी० के सम्बन्ध में विस्तृत जांचोपरांत विधिसम्यक आदेश पारित करना सुनिश्चित करें।

26. Bare perusal of the aforesaid order clearly shows that the contentions raised by the revisionist were noted and at the bottom of the order, while remanding the matter, it was directed that after detailed inquiry, to pass an order in accordance with law. This makes it clear that while remanding the matter, the issue was open for the assessing authority to make detail inquiry and then, pass an order in accordance with law.
27. The learned counsel for the parties have relied upon the judgement of the Full Bench of this Court in ***M/s Ram Dayal Harbilas*** (supra). The relevant paragraphs of the said judgement as emphasized by the learned counsel for the revisionist are paragraph nos. 4, 5, 6, 10, 13, 18, 20 & 23 to show that once there is a specific direction, then the assessing authority is duty-bound to follow it. Learned ACSC has relied upon paragraph nos. 13 & 14 of the said judgement and tried to justify that when the matter was remanded for passing an order after detailed inquiry and in accordance with law, then it is an open remand.
28. On perusal of the order dated 24.10.2019 passed by the appellate authority in first round of litigation as well as the judgement of the Full Bench of this Court in ***M/s Ram Dayal Harbilas*** (supra), it is clear that the remand order for passing afresh order in

accordance with law is an open remand order. The case in hand shows that the matter was not remanded by the first appellate authority with a specific direction as noted above and therefore, the order passed after remand by the assessing authority as well as the Tribunal cannot be said to be unjustified.

29. Further, the judgements cited by the learned Senior Advocate in *M/s Guru Nanak Brick Fields* (supra) and *M/s PNC Construction Company Limited* (supra) are of no help to the revisionist as observed above that the matter was remanded to decide after detailed inquiry and in accordance with law.
30. The record further shows that once the lubricant became taxable item at the hand of the manufacturer and importer and for the trader it become non VATable goods, and once the item is declared as non VAT goods in the hand of the trader as revisionist is also a trader, the judgements cited by the learned Senior Counsel for the revisionist in *M/s Kumar Motors, Bareilly* (supra), *M/s Mercury Laboratories Pvt. Ltd.* (supra), *M/s Goodage Rubber Works* (supra) and *Indra Industries* (supra) that the circular will influence the same, will be of no help to the revisionist.
31. Further, the record shows that the revisionist, in its wisdom, has not challenged the validity of the circular dated 17.01.2014 before any competent court. Under the revisional jurisdiction, the validity of the circular cannot be tested.
32. In view of the aforesaid facts & circumstances of the case, no interference is called for by this Court in the impugned order.
33. The revision fails and is hereby dismissed.
34. The questions of law are answered accordingly in favour of the Revenue.

Order Date :-20/12/2024

Amit Mishra