



GOVERNMENT OF KARNATAKA
(Department of Commercial Taxes)

No.ADCOM (L.A).CR.09/2017-18

Office of the Commissioner of Commercial Taxes,
(Karnataka), Vanijya Therige Karyalaya,
Gandhi Nagar, Kalidasa Road,
Bengaluru-560009. Dated: 09.10.2017.

COMMISSIONER OF COMMERCIAL TAXES CIRCULAR NO: 09 /2017-18

Sub: Certain guidelines in the light of the judgment of the Hon'ble Supreme Court in
the case of State of Karnataka –Vs- M/s. M. K. Agro Tech Pvt. Limited

Ref: Civil Appeal Nos.15049-15069 OF 2017 Judgment Dated 22nd September, 2017.

The Hon'ble Supreme Court of India in the case of State of Karnataka Vs M/s M. K. Agro Tech Pvt. Limited [Civil Appeal Nos.15049-15069 OF 2017] has delivered Judgment on 22nd September 2017 and has upheld partial rebating required to be adopted with regard to taxable and non-taxable goods as provided under section 17 of KVAT Act, 2003 read with Rule 131 of KVAT Rules, 2005. The Hon'ble Supreme Court has set aside the judgement of the Division Bench of the Hon'ble High Court of Karnataka [STRP Nos.774-794 OF 2013 Judgment Dated 17th July 2014] and has held as under;

“On literal interpretation of Section 17 it can be gathered that it does not distinguish between by-product, ancillary product, intermediary product or final product. The expressions used are ‘goods’ and ‘sale’ of such goods is covered under Section 17. Both these ingredients stand satisfied as de-oiled cakes are goods and the respondent assessee had sold those goods for valuable consideration. We may point out there that the assessing authorities recorded a clear finding, which was accepted by the Tribunal as well, that records and statement of accounts of the respondent assessee clearly stipulates that after solvent extraction is completed, 88% of de-oiled cake remains and only 12% remains is the oil which is further refined in the refinery. This clearly shows

that major outcome (88%) of the solvent extraction plant is de-oiled cake which in itself is a marketable good having market value."

2. In the said judgement, the Hon'ble Supreme Court of India has set aside the judgment of the Hon'ble High Court of Karnataka and has explained the intention of the Legislature behind section 17 of KVAT Act, 2003 as under;

"27) After examining the relevant provisions of KVAT Act and bestowing our serious consideration to the respective arguments, we find it difficult to accept the aforesaid approach of the High Court.

28) The first mistake which is committed by the High Court is to ignore the plain language of sub-section (1) of Section 17. This provision which allows partial rebate makes the said provision applicable on the 'sales' of taxable goods and goods exempt under Section 5. Thus, this sub-section refers to 'sale' of the 'goods', taxable as well as exempt, and is not relatable to the 'manufacture' of the goods. The High Court has been swayed by the fact that while extracting oil from sunflower, cake emerges only as a by-product. Relevant event is not the manufacture of an item from which the said by-product is emerging. On the contrary, it is the sale of goods which triggers the provisions of Section 17 of KVAT Act. Whether it is by-product or manufactured product is immaterial and irrelevant. Fact remains that de-oiled cake is a saleable commodity which is actually sold by the respondent assessee. Therefore, de-oiled cake fits into the definition of "goods" and this commodity is exempt from payment of any VAT under Section 5 of the KVAT Act. Thus, provisions of Section 17 clearly get attracted when 'sale' of these goods takes place.

29) Secondly, as rightly pointed out by the learned counsel for the appellant, the High Court has not considered the import and effect of sub-rule (3) of Rule 131 of the KVAT Rules. We have already reproduced Rule 131, including sub-rule (3) thereof. After perusing Rule 131 in its entirety, it becomes clear that sub-rule (1) pertains to input tax directly relatable to sales of exempt goods which is non-deductible. Likewise, sub-rule (2) mandates that input tax directly relating to sale of goods shall be deductible. On the other hand, sub-rule (3) covers those cases where input tax is not directly relatable to exempt goods and taxable goods. It is therefore, applied in those cases where input tax relating to both sale and taxable goods and exempt goods is known. In that situation, formula is given under this sub-rule to work out the partial deduction. The High Court has neither take note of nor discussed sub-rule (3).

30) Thirdly, the reading of the impugned judgment would disclose that the High Court was conscious of the fact that when literal interpretation

to Section 17 is given, the case of the assessee would get covered thereby. It is for this reason the High Court has chosen to depart from the rule of literal construction, on the ground that the literal construction would lead to absurdity and would defeat the object of the Act. Therefore, according to the High Court, the purposive construction is to be resorted to achieve the object for which the provision is enacted. It is here we beg to differ with the High Court. Literal construction in the present case does not lead to any absurd results. On the contrary, the object behind Section 17 allowing partial rebate in such cases gets achieved when the said provision is applied giving literal construction in the instant case. Here is a case where the respondent assessee has paid input tax while purchasing the raw material, namely, sunflower oil cake. This has been used for extraction of sunflower oil. Even after extracting the sunflower oil what remains is de-oiled cake which, no doubt, is a by-product. However, it is not to be discarded as waste. Rather, it is not only marketable as "goods" but fetches significant sale price. The ratio of sale of sunflower oil and de-oiled cake is 55:45. The respondent assessee is, thus, able to generate 45% revenue from the sale of de-oiled cake. However, no output tax is paid on the sale of this item since this item is exempted from payment of VAT under Section 5 of the KVAT Act. Section 17 is meant to take care of these situations, which is the purpose behind that provision. Approach of the High Court, in fact, defeats the said purpose. Therefore, there was no reason for departing from the principle of literal construction in a taxing statute. It is settled proposition of law that taxing statutes are to be interpreted literally {See *Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*⁴, *State of Madhya Pradesh v. 4* (2014) 6 SCC 444 *Rakesh Kohli & Anr.*⁵ and *V.V.S. Sugars v. Government of Andhra Pradesh & Ors.*⁶}.

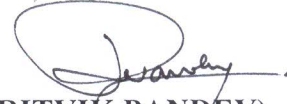
31) Fourthly, the entire scheme of the KVAT Act is to be kept in mind and Section 17 is to be applied in that context. Sunflower oil cake is subject to input tax. The Legislature, however, has incorporated the provision, in the form of Section 10, to give tax credit in respect of such goods which are used as inputs/ raw material for manufacturing other goods. Rationale behind the same is simple. When the finished product, after manufacture, is sold, VAT would be again payable thereon. This VAT is payable on the price at which such goods are sold, costing whereof is done keeping in view the expenses involved in the manufacture of such goods plus the profits which the manufacturer intends to earn. Insofar as costing is concerned, element of expenses incurred on raw material would be included. In this manner, when the final product is sold and the VAT paid, component of raw material would be included again. Keeping in view this objective, the Legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the Legislature and the courts are not to tinker with the same.

3. Therefore, in view of the ratio of the judgement of the Hon'ble Apex court, the issue has been finally settled and reached the finality and hence, apportionment of input tax in respect of oil cake purchased and used in the manufacture of sunflower oil and de-oiled cake is to be made in accordance with the provisions of section 17 of KVAT Act, 2003 and rule 131 of KVAT Rules, 2005. As per the information available, many of the cases have been assessed/re-assessed based on the judgement of the division bench of the Hon'ble High Court of Karnataka allowing input tax credit by not restricting it on the exempted value of de-oiled cake. In many of the cases refunds have been granted by applying the judgement of the division bench of the Hon'ble High Court of Karnataka. As per the decision of the Hon'ble Supreme Court of India, input tax credit is to be restricted in respect of exempted value of de-oiled cake. In view of the position of law settled as per the Judgement of the Hon'ble Supreme Court of India, following instructions are issued.

- a) With regards to refunds made already on the basis of the order of the Hon'ble High Court of Karnataka, the refunding authorities shall take immediate measures to collect the refunded amount by passing appropriate orders as per law.
- b) All the assessments/re-assessments concluded by the assessing authorities allowing input tax credit on de-oiled cake or any other exempted goods as the case may be are to be re-opened and re-assessed in the light of the decision referred to above and shall be re-assessed under the provisions of the Act.
- c) All the cases of the previous years wherever input tax credit is taken without restriction in respect of de-oiled cake and other exempted goods shall be taken up for re-assessments and shall be concluded on priority as per the provisions of the Act and on ratio of the judgment of the Hon'ble Supreme Court and penalty and interest shall be levied as per the levies as existed at that point of time for the relevant years of assessment/re-assessment.
- d) If there is any stay order for assessment/re-assessment/recovery proceedings, issued by any appellate authority or court, action shall be initiated to get the stay vacated and to proceed to assess/re-assess the cases and recover the dues.
- e) Any revisional proceedings are required to be initiated on account of conclusion of proceedings by the assessing authorities/revisional authorities/appellate authorities in

view of the judgement, concerned authorities shall refer the cases to the appropriate authorities for revision or if required shall take appropriate action as per law in the background of the judgment referred to in this circular.

- f) Enforcement authorities shall take immediate action to cull out information and take up inspection and to conclude the proceedings as early as possible and send the reports to the concerned DGSTOs to take up assessment/reassessment proceedings as the case may be.
- g) Compliance with regard to the progress made in these cases shall be submitted to Additional Commissioner of Commercial Taxes (Legal Affairs), CCT's Office, Bengaluru on or before 15th November, 2017.
- h) Instructions issued in this circular shall be followed to implement the judgment and any violation or deviation will be viewed seriously.



(RITVIK PANDEY)
Commissioner of Commercial Taxes
(Karnataka), Bengaluru.

Copy to all the officers of the Commercial Taxes Department in the State.