



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 22<sup>nd</sup> 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 22<sup>nd</sup> 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 17<sup>th</sup> 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*

