REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 15049-15069 OF 2017

THE STATE OF KARNATAKA .....APPELLANT(S)

VERSUS

M/S. M.K. AGRO TECH PVT. LTD. .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

In these appeals, a short but interesting question of law arises for consideration. It pertains to the construction of Section 17 of the Karnataka Value Added Tax (Act), 2003 [hereinafter referred to 'KVAT Act'] read with Rule 131 of the Karnataka Value Added Tax Rules, 2005 (hereinafter referred to as the 'KVAT Rules, 2005').

2) The respondent is the manufacturer of sunflower oil, which is extracted from sunflower cake by employing solvent extraction process. Sunflower oil cake, is, thus, used as input/raw material. On purchase of sunflower oil cake (input) VAT is payable under

the KVAT Act. After the extraction of sunflower oil, on its sale again VAT is payable under the said Act. For this reason, provisions of KVAT Act provides for tax credit paid on the input. To this extent there is no issue. However, when the sunflower oil is extracted, by-product in the form of de-oiled sunflower oil cake (hereinafter referred to as the 'de-oiled cake') also becomes available. This by-product is sold by the respondent (hereinafter referred to as the 'assessee) but on the sale of this by-product, no VAT is payable as it is exempted item under the KVAT Act. Section 17 of the KVAT Act takes care of those contingencies where the final products are more than one and output tax is payable on the sale of one such final product but other final product is exempted from payment of the said output tax. Since, no output tax is payable on the sale of exempted goods, the input tax credit in such cases is partially admissible. The manner in which partial exemption is given is provided in Rule 131 of KVAT Rules, 2005.

3) Keeping in view this provision, the appellant - State has taken the view that the assessee would be entitled to only partial rebate of input tax because of the reason that though output tax is paid on sunflower oil, it is not paid on the sale of de-oiled cake. The assessee, on the other hand, contends that Section 17 of the

KVAT Act would not be applicable in the instant case because of the reason that sunflower oil cake, as an input, is used in its entirety in the extraction of sunflower oil. De-oiled cake is not the result of any manufacturing process but is only a by-product. Therefore, sale of such by-product, even when it is exempted from output tax, would not have any bearing. The High Court in its impugned judgment has accepted this position adopted by the assessee thereby giving full input tax deduction.

4) Having narrated the background in which the question of law arises for consideration, we may now recapitulate the factual background in some more detail.

5) The respondent is a private limited company registered under the provisions of the KVAT Act and also under the provisions of Central Sales Tax Act, 1956. The assessee carried on business of manufacturing and trading of various kinds of edible oil. For the purpose of manufacturing edible oil, the assessee has three units solvent extraction unit, refinery unit and a trading unit. It purchases oiled sunflower cake as an input (pays input sales tax on that), extracts oil out of it in the solvent extraction plant, the oil is then refined in the refinery and trading is carried on through the trading unit. Indisputably the assessee also sells de-oiled cake

which is a marketable good in itself. De-oiled cake is a byproduct of solvent extraction process carried out in the solvent extraction plant in which oil is removed from the oiled cake and the remains are 88% de-oiled product and 12% oil. De-oiled cake is an exempt good and, therefore, it does not suffer any VAT. The other goods, viz., edible oils manufactured and sold by the assessee suffer output tax which the assessee collects.

6) Returns were filed by the assessee for the period from March, 2005 to March, 2007. The prescribed authority, after scrutinizing the returns filed by the assessee and after issuing proposition notice and also considering the objections filed, concluded the assessment proceedings under Section 38(1) of the Act holding that the assessee was eligible only for partial input tax rebate as per Section 17(1) of the KVAT Act read with Rule 131(3) of the KVAT Rules, 2005. It was observed by the prescribed authority that the assessee, while manufacturing/extracting sunflower oil from the sunflower cake, has also obtained de-oiled cake. Sunflower oil being liable to tax and de-oiled cake being exempted from tax under Section 5 of the Act vide Government Notification No. FD 197 CSL 2005(1) dated 30.04.2005, partial input tax rebate was allowed.

7) The assessee being aggrieved by the said order, filed appeals before the First Appellate Authority who dismissed the same confirming the order passed by the prescribed Authority. Undeterred by the said order, the assessee preferred second appeals before the Karnataka Appellate Tribunal, Bangalore. The Tribunal confirmed the order passed by the First Appellate Authority. Without losing patience, the respondent preferred revision petitions before the High Court of Karnataka. This effort yielded favourable results for the assessee. The High Court interpreted the provisions of Section 11(a)(1) and Section 17(1) of the Act read with Rule 131 of the KVAT Rules, 2005 applying the principle of purposive construction has allowed the revision petitions filed by the assessee vide its judgment dated July 17, 2014 holding that the assessee is entitled to the benefit of full input tax deduction.

8) Before we proceed to write down the arguments advanced by the counsel for the parties, it would be apposite to take note of the salient provisions of the KVAT Act, 2003 which are relevant to decide these appeals.

9) Section 2(6) defines “business” broadly to include not only any trade, commerce or manufacture but also any transaction in

connection with, or incidental to, or ancillary to such trade, commerce or manufacture.

10) Section 2(15) and Section 3 read as under:

> "**Section 2(15) -** 'Goods' means all kinds of movable property (other than newspaper, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities and articles (including goods, as goods or in some other form) involved in the execution of a works contract or those goods to be used in the fitting out, improvement or repair of movable property, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale.
>
> **Section 3 - Levy of tax.-**
>
> (1) The tax shall be levied on every sale of goods in the State by a registered dealer or a dealer liable to be registered, in accordance with the provisions of this Act.
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> (2) The tax shall also be levied, and paid by every registered dealer or a dealer liable to be registered, on the sale of taxable goods to him, for use in the course of his business, by a person who is not registered under this Act."

11) Section 5 provides that some goods which are specified in the first schedule or under notification by state government shall be exempted from tax. It is under this provision that the government by way of a notification in 2005, exempted de-oiled cakes.

12) Section 10 and Section 11(a)(1) read as under:

"**Section 10 - Output tax, input tax and net tax.-**

(1) Output tax in relation to any registered dealer means the tax payable under this Act in respect of any taxable sale of goods made by that dealer in the course of his business, and includes tax payable by a commission agent in respect of taxable sales of goods made on behalf of such dealer subject to issue of a prescribed declaration by such agent.

(2) Subject to input tax restrictions specified in Sections 11,12,14, 1 [17 and 18], input tax in relation to any registered dealer means the tax collected or payable under this Act on the sale to him of any goods for use in the course of his business, and includes the tax on the sale of goods to his agent who purchases such goods on his behalf subject to the manner as may be prescribed to claim input tax in such cases. 1. Substituted by Act 6 of 2005 w.e.f. 19.3.2005.

(3) Subject to input tax restrictions specified in Sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period and shall be accounted for in accordance with the provisions of Chapter V.

(4) For the purpose of calculating the amount of net tax to be paid or refunded, no deduction for input tax shall be made unless a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 or Section 30 and is with 2004: KAR. ACT 32] Value Added Tax 229 the registered dealer taking the deduction at the time any return in respect of the sale is furnished, except such tax paid under sub-section (2) of Section 3.

(5) Subject to input tax restrictions specified in Sections 11,12, 14, 17, 18 and 19, where under sub-section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest, as may be prescribed.

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11. Input tax restrictions.-

> **(a)** Input tax shall not be deducted in calculating the net tax payable, in respect of:
>
> "**(1)** tax paid on purchases attributable to sale of exempted goods exempted under Section 5, except when such goods are sold in the course of export out of the territory of India;"

13) Section 17 of the KVAT Act, 2003 deals with "Partial Rebate" and makes the following reading:

> "17. Partial rebate.- Where a registered dealer deducting input tax.-
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> (1) makes sales of taxable goods and goods exempt under Section 5, or
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> (2) in addition to the sales referred to in clause (1), dispatches taxable goods or goods exempted under Section 5 outside the State not as a direct result of sale or purchase in the course of inter-State trade, or (3) puts to use the inputs purchased in any other purpose (other than sale, manufacturing, processing, packing or storing of goods), in addition to use in the course of his business, apportionment and attribution of input tax deductible between such sales and dispatches of goods or such purpose, shall be made in accordance with Rules or by special methods to be approved by the Commissioner or any other authorised person and any input tax deducted in excess shall become repayable forthwith."

14) Rule 131 of the KVAT Rules, 2005 prescribes the formula/accounting procedure prescribing the manner in which apportionment of input tax is to be made for the purposes of giving partial rebate under Section 17 of the KVAT Act, 2003. This Rules is as under :

"**Rule 131. Apportionment.—** Apportionment of input tax in the case of a dealer falling under section 17 shall be calculated as follows.-

(1) All input tax directly relating to sale of goods exempt under section 5 other than such goods sold in the course of export out of the territory of India, is non-deductible.

(2) All input tax directly relating to taxable sales may be deducted, subject to the provisions of section 11.

(3) Any input tax relating to both sale of taxable goods and exempt goods, including inputs used for non-taxable transactions, that is, the non-deductible input tax, may be calculated on the basis of the following formula:

(Sales of exempt goods + non-taxable transactions) X Total input tax.

(i) Non-deductible input tax = ----------
Total sales (including non-taxable transactions)

(4) For the purpose of clause (3).-

(a) "Sale of taxable goods" would be the aggregate of the amounts specified in clauses (b), (c), (d), (e) and (f) of sub-rule (1) of Rule 3 relating to sale of goods other than those exempt under Section 5 which are not sold in the course of export out of the territory of India; and

(b) "total sales" means total turnover less.-

(i) the amount specified in clause (a) of sub-rule (1) of rule 3, and

(ii) the deductions specified in clause (e) of sub-rule (2) of rule 3.

(iii) the aggregate of sale prices received or receivable in respect of subsequent sale in the course of inter-state trade or commerce of any goods purchased in the course of inter-State trade or commerce during their inter-state movement.

(iv) the aggregate of sale prices received or receivable

> in respect of sale in the course of export out of the territory of India of any goods purchased in the course of export; and
>
> (v) the aggregate of sale prices received or receivable in respect of sale in the course of import into the territory of India of any goods purchased in the course of import.
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> (5) Where in the case of any dealer, the Commissioner is of the opinion that the application of the formula prescribed under clause (3) does not give the correct amount of deductible input tax, he may direct the dealer to adopt a special formula as he may specify."

15) Referring to the aforesaid provisions, Mr. Patil, learned senior counsel appearing for the appellant – State summarised the statutory scheme with the submission that Section 2(15) covers all movable properties including live stocks etc. It does not lay down any distinction between by-products, ancillary products or intermediate products. Any product which is marketable and sold will be covered within the definition of 'goods'.

16) Section 2(13) defines "input" to mean any good purchased by dealer in course of his business or for use in manufacture or processing or packaging of other goods. Use of the plural expression goods clearly implies that input may be used for more than one goods as well. This is to mean that there is no express or implied restriction to say that a particular input may be used for manufacture/processing etc. of a single good. Moreover, the

legislature has intended to cover not only ‘manufacture’ but a much wider term ‘processing’. The rationale is that as against excise law in which manufacture is relevant, under KVAT, sale is the point of levy.

17) Section 3, which is the levying provision, clearly stipulates “sale” as the point of levy. Thus, needless to say, what is relevant under the Act in whether a ‘sale of goods’ is taking place irrespective of the fact whether the goods are manufactured by the seller or not. Manufacture becomes an important point in excise law and not for the purpose of sales tax. However, manufacture does become important for this act for the limited purpose because a good will be called input if it is used for manufacturing or processing or packaging of any goods.

18) Section 10 defines “input tax”, “output tax” and “net tax”. Net tax with respect to a particular sale; output tax received on sale as such goods and input tax used for manufacturing/processing/ packaging such goods.

19) Section 11(a)(1) stipulates that where a sale of exempted goods is taking place, i.e., there is no output tax received on such sale, the input tax paid for manufacturing/processing etc such exempt goods cannot be credited while calculating net tax. The rationale

behind such provision is simple, where the dealer has not received any output tax on sale, there does not arise any question of deducting input tax. If input tax is allowed to be deducted, it would necessarily lead to a situation where there will be no taxation on purchase of inputs nor on the sale of product manufactured by using such inputs.

20) He argued that in Section 11(a)(1) of the KVAT Act, two expressions are noteworthy, namely' 'attributable to' and 'sale of exempted goods". According to him, the legislature has wisely used the expression 'attributable to' as against the expression 'directly related to'. Likewise, the expression 'tax payable on purchases attributable to sale of exempted goods' clearly shows that legislature intends to attribute purchases to 'sale of exempted goods' and not merely 'manufacture of exempted goods'.

21) Mr. Patil further argued that Section 17(1) provides for a situation where a dealer deducting input tax sells taxable and exempt goods. First requirement of this section is that the dealer must be 'deducting input tax' and secondly the dealer must have made sale of both taxable and exempt goods. Legislature has clearly foreseen such situation and has provided a solution by 'apportionment and attribution' of input tax deductible between

such sales. The expression 'attribution' appearing under this section must be related to the expression 'attribution' appearing under Section 11(1). Where Section 11(1) provides that input tax attributable to sale of exempt goods is non-deductible, Section 17 goes a step ahead to cover those situations where, a dealer is engaged in both exempt and taxable goods in which it becomes relevant to attribute input tax paid on both the categories of such goods. It would not be wrong to say that Section 17(1) seems to be giving a practical effect to Section 11 by providing formulae in the rules, for calculating the amount of input tax attributable or apportioned for sale of exempt and taxable goods. Needless to say, even here the legislature has used the expression 'sale' as against 'manufacture' thus making it clear that sale is an end point.

22) Coming to Rule 131 of the KVAT Rules, 2005, he emphasized that it completes Section 17 by prescribing a formulae for apportioning input tax between the sales of taxable goods and exempt goods. Sub-rule (1) simply provides that input tax directly relating to sales of exempt goods shall be non-deductible. Thus, this sub-rule would apply in those situations where it is easy to ascertain the input tax directly relating to sale of exempt goods. Similarly, sub-rule (2) simply provides that input tax directly

relating to sale of taxable goods shall be deductible. Sub-rule (3) covers a situation where input tax is not directly relatable to exempt goods and taxable goods. It is for this reason that the term 'directly' is missing in sub-rule (3). It speaks of a situation where input tax relating to both sale of taxable goods and exempt goods is known. But it provides that such input tax may be deducted only after applying a formulae prescribed therein. The purpose of formulae is simply to attribute and apportion the quantum of input tax relating to exempt goods so that it may be excluded from the total input tax. The expression 'non-identifiable input tax' clearly shows legislatures intention to cover even those situations where it is difficult to identify as to how much of input tax is attributable/apportioned for taxable goods and for exempt goods so that the extent of rebate/credit a dealer is entitled to may be calculated.

23) Attacking the judgment of the High Court, Mr. Patil submitted that the High Court has given emphasis on the aspect of "manufacture" in holding that insofar as sunflower cake is concerned it is used for the manufacture of sunflower oil and since it is consumed in the said manufacture and no manufacturing activity is involved for the production of de-oiled cake, which is only a by-product, the question of partial rebate

would not arise. According to him, Section 17 makes the provision of partial rebate available whenever there is a sale of an exempted item. In the instant case, even if de-oiled cake was a by-product, it was sold in the market which fact is sufficient to attract the provisions of Section 17. It was pointed out by Mr. Patil that sale value of sunflower refined oil was 54.01% and that of de-oiled cake was 45.98%. Thus, this cake was not in the nature of some waste product which was dumped as a waste or garbage but yielded substantial earnings for the assessee, on which no output tax was paid as this item is exempted from such a tax. He argued that, in a situation like this, the assessee could not be given the benefit of reduction of full input tax. He also submitted that the High Court in its judgment has not mentioned about sub-rule (3) of Rule 131, which Rule has been relied upon by the Assessing Authority. Without prejudice to the aforesaid contentions, Mr. Patil further submitted that de-oiled cake is an outcome of the process called 'solvent extraction process' carried on in the process extraction plant of the respondents. However, in addition to that the appellant has not hesitation in submitting that the respondents are also carrying on manufacturing of de-oiled cakes. The expression 'manufacture' has been subject to judicial interpretation in many cases. In ***Commissioner of***

Central Excise, Jaipur v. ***Mahavir Aluminum Ltd.***[1], this Court held:

> "19. In the present case, the assessee is not only captively consuming Aluminium Billets for the production of Irrigation Pipes but is also selling such commodity in open market. It is, therefore, clear that the process of 'manufacture' results in emergence of new commercial commodity, namely, 'Billets'. The said commodity has an independent marketability and the assessee itself has sold Billets in open market by paying Excise Duty.
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> xxx xxx xxx
>
> 21. Ingots and Billets are thus two different commercial commodities. They have separate, distinct and identifiable marketability and saleability. The assessee, no doubt, used Aluminium Billets captively but is also selling in open market. We are, therefore, of the view that the Commissioner was right in holding that the assessee was liable to pay Excise Duty and CEGAT was wrong in interfering with the order-in-original. The order of the CEGAT, therefore, is liable to be set aside."

24) According to Mr. Patil, de-oiled cake and oiled cake are separate and distinct products having different marketability and commercial uses. The distinction between the two products had also been held by this Court in ***Ravi Prakash Refineries Private Ltd.*** v. ***State of Karnataka***[2] in which it was held that they are two different commercial commodities.

25) He also referred to the case of ***State of Gujarat*** v. ***Raipur***

1 (2007) 5 SCC 260
2 (2016) 12 SCC 193

Manufacturing Co. Ltd.[3] holding that where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacture to sell not only the main item manufactured but also the subsidiary product.

26) Putting an emphatic response, Mr. Chidambaram laid emphasis on the scheme contained in Section 10 of the KVAT Act dealing with output tax, input tax and net tax. His contention was that this Section clearly provides for payment of net tax by a registered dealer. For this reason, input tax which is paid, has to be deducted from the output tax. Sub-section (3) of Section 10 mandates a registered dealer to pay net tax in respect of each tax period which is the amount of output tax payable by him in that period, less the input tax deductible by him. Therefore, argued the learned senior counsel, the assessee was entitled to deduct the input tax that was paid by it on purchase of sunflower oil cake. He also emphasised the word 'attributable'; occurring in Section 11(a)(1). On that basis, he argued that Section 11 of the KVAT Act, which prescribes restrictions on input tax categorically mentions that tax paid on purchases 'attributable' to sale or manufacture etc. of exempted goods exempt under Section 5 are

3 (1967) 19 STC 1; AIR 1967 SC 1066

not deductible in calculating the net tax payable by the assessee. According to him, the High Court, on that basis, rightly observed that the condition precedent for having the benefit of input tax deduction is that the goods sold or manufactured by the assessee should be liable to tax under the Act and if no output tax is payable then the question of deducting input tax in order to calculate the net tax would not arise. Coming to the interpretation that needs to be assigned to Section 17 of the KVAT Act, his plea was that the High Court has correctly interpreted the said provision in conjunction with Rule 131 of the KVAT Rules and rested his case adopting the said reasoning by extensively reading paragraphs 10 and 11 of the impugned judgment, as per which the assessee was in the sale or manufacture of only one product which is taxable and merely because in the process of manufacture or in the process of sale certain ancillary or by-product arises which can be sold for a certain period, provisions of Section 17 would not get attracted.

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. This proposition is authoritatively

5 (2012) 6 SCC 312
6 (1999) 4 SCC 192

determined by this Court in series of judgments. We may refer to the judgment in ***Godrej & Boyce Mfg. Co. Pvt. Ltd. & Ors.*** v. ***Commissioner of Sales Tax and Others***[7] and the relevant extract which is relevant for our purposes is as follows:

> "9. Sri Bobde appearing for the appellants reiterated the contentions urged before the High Court. He submitted that the deduction of one per cent, in effect, amounts to taxing the raw material purchased outside the State or to taxing the sale of finished goods effected outside the State of Maharashtra. We cannot agree. Indeed, the whole issue can be put in simpler terms. The appellant (manufacturing dealer) purchases his raw material both within the State of Maharashtra and outside the State. Insofar as the purchases made outside the State of Maharashtra are concerned, the tax thereon is paid to other States. The State of Maharashtra gets the tax only in respect of purchases made by the appellant within the State. So far as the sales tax leviable on the sale of the goods manufactured by the appellant is concerned, the State of Maharashtra can levy and collect such tax only in respect of sales effected within the State of Maharashtra. It cannot levy or collect tax in respect of goods which are despatched by the appellant to his branches and agents outside the State of Maharashtra and sold there. In law (apart from Rules 41 and 41-A) the appellant has no legal right to claim set-off of the purchase tax paid by him on his purchases within the State from out of the sales tax payable by him on the sale of the goods manufactured by him. It is only by virtue of the said Rules — which, as stated above, are conceived mainly in the interest of public — that he is entitled to such set-off. It is really a concession and an indulgence. More particularly, where the manufactured goods are not sold within the State of Maharashtra but are despatched to out-State branches and agents and sold there, no sales tax can be or is levied by the State of Maharashtra. The State of Maharashtra gets nothing in respect of such sales effected outside the State. In respect of such sales, the rule-making authority could well have denied the benefit of set-off. But it chose to be generous and has extended the said

7 (1992) 3 SCC 624

> benefit to such out-State sales as well, subject, however to deduction of one per cent of the sale price of such goods sent out of the State and sold there. We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of set-off is itself a boon or a concession. It was open to the rule-making authority to provide for a small abridgement or curtailment while extending a concession. Viewed from this angle, the argument that providing for such deduction amounts to levy of tax either on purchases of raw material effected outside the State or on sale of manufactured goods effected outside the State of Maharashtra appears to be beside the point and is unacceptable. So is the argument about apportioning the sale-price with reference to the proportion in which raw material was purchased within and outside the State.
>
> (emphasis added)"

To the same effect are the judgments in the case of ***Hotel Balaji & Ors.*** v. ***State of Andhra Pradesh & Ors.***[8] and ***Jayam and Company*** v. ***Assistant Commissioner and Another***[9]. In this context, if the Legislature has decided to give partial rebate of input tax under the circumstances mentioned in that provision, that has to be strictly applied.

32) 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

8 (1993) Supp 4 SCC 536
9 (2015) 15 SCC 125

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.

33) The aforesaid reasons given by us are sufficient to hold that Section 17 gets attracted in the instant case and the view taken by the High Court is erroneous. Therefore, it is not necessary for this Court to deal with the other contention of the appellant State viz. whether de-oiled cake itself amounts to manufacture or not.

34) The appeals are, accordingly, allowed with cost and the judgment of the High Court is set aside.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
SEPTEMBER 22, 2017.

ITEM NO.1502 COURT NO.6 SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 15049-15069/2017

THE STATE OF KARNATAKA Appellant(s)

VERSUS

M/S M.K. AGRO TECH PVT. LTD. Respondent(s)

Date : 22-09-2017 This matter was called on for pronouncement of judgment today.

For Appellant(s)
Mr. V. N. Raghupathy, AOR
Mr. Chinmay Deshpande, Adv.
Mr. Parikshit P. Angadi, Adv.

For Respondent(s)
Mr. P. Chidambaram, Sr. Adv.
Mr. Vivek Jain, Adv.
Mr. Rishi Agarwala, Adv.
Mr. Vikrant Pachnanda, Adv.
Mr. E. C. Agrawala, AOR

Hon'ble Mr. Justice A. K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

The appeals are allowed in terms of the signed reportable judgment.

(NIDHI AHUJA) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER

[Signed reportable judgment is placed on the file.]