

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

SALES TAX REVISION PETITION NO. 19 OF 2020

BETWEEN:

THE COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA,
P. KALINGARAO ROAD,
1ST MAIN ROAD, GANDHINAGAR,
BENGALURU-560 009

...PETITIONER

(BY SRI. ADITHYA VIKRAM BHAT, AGA)

AND:

M/S JINDAL ALUMINIUM LIMITED
16TH KM. TUMKUR ROAD,
JINDAL NAGAR, BENGALURU-560 073

...RESPONDENT

(BY SRI. SANDEEP HUILGOL, ADVOCATE)

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by PANKAJA S
Location: HIGH
COURT OF
KARNATAKA

THIS STRP IS FILED UNDER SEC. 65(1) OF THE KARNATAKA VALUED ADDED TAX ACT, 2003 AGAINST THE JUDGMENT DATED 05.10.2018 PASSED IN STA.NO.247/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 04.02.2017 PASSED IN VAT. A.P. NO.137/148/15-16 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEAL-6) BENGALURU DISMISSING THE APPEAL AND UPHOLDING THE RECTIFICATION ORDER DATED 16.10.2015 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 6-3,

DVO-06 BENGALURU FOR THE TAX PERIODS OF APRIL 2008 TO MARCH 2009.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON 18.06.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K, J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

The present Sales Tax Revision Petition No.19/2020 has been filed by the Commissioner of Commercial Taxes (hereinafter referred as, 'Revenue'), assailing the order dated 05.10.2018 in STA No.247/2017 passed by the Karnataka Appellate Tribunal (for short, 'Tribunal') whereby the Tribunal allowed the appeal filed by the respondent-assessee and set aside the orders passed by the Assessing Authority (AA) as well as the First Appellate Authority (FAA).

2. Brief facts of the case, as borne out from the records, is that, the respondent-assessee is a registered dealer under the Karnataka Value Added Tax Act, 2003 (for short, 'KVAT Act'), the Central Sales Tax Act, 1956 and the Karnataka Tax on Entry of Goods Act, 1979, engaged in the manufacture and sale of aluminium extrusions. In the course of

manufacture, the assessee uses petroleum products such as furnace oil/fuel oil as fuel and claimed input tax rebate/input tax credit thereon under Sections 14 and 17 of the KVAT Act read with Rule 131(3) of the KVAT Rules, 2005. During the tax period 2008-09, the assessee effected local sales, inter-State sales, export sales and also dispatched goods outside the State on stock transfer basis.

3. The assessment for the said period was reopened under Section 39(1) of the KVAT Act and the Assessing Authority initially disallowed the claim of input tax rebate on petroleum products by order dated 11.03.2011. However, upon a rectification application filed by the assessee under Section 69 of the KVAT Act, the Assessing Authority reconsidered the matter and, by order dated 15.04.2011, accepted the assessee's claim and raised *nil* demand. Subsequently, a fresh notice dated 27.06.2015 was issued under Sections 69 and 39(1) of the KVAT Act proposing disallowance of the input tax credit on petroleum products, culminating in an order dated 16.10.2015 disallowing the claim and raising consequential tax, interest and penalty demands.

4. Aggrieved by the said order, the assessee preferred an appeal before the First Appellate Authority, which came to be dismissed by order dated 04.02.2017. The assessee thereafter filed STA No.247/2017 before the Karnataka Appellate Tribunal. The Tribunal allowed the appeal and passed the following order:

"ORDER

1. The appeal in STA No.247/2017 is allowed. The orders passed by the AA and the FAA for the tax periods of 2008-09 are set aside.
2. The matter is remitted to the AA for a limited purpose of adopting the quantum of Non-Deductible Input Tax for the purpose of section 11(a)(5) read with section 11(a)(6), 14 and 17 as per the calculations made by the appellant, which method is approved as stated in illustration referred supra, for all the tax periods of 2008-09 and recalculate the liability with penalty and interest as applicable and to issue revised demand notices accordingly.
3. The Registrar of the tribunal is directed to comply with Regulation 53(b) of Chapter-IX of Karnataka Appellate Tribunal Regulations 1979 by communicating this order to the persons mentioned therein
4. The office is directed to send back the records to lower authorities immediately."

Aggrieved thereby, the revenue has preferred the present appeal.

5. Heard learned Additional Government Advocate Sri. Aditya Vikram Bhat for the revision petitioner and Learned Counsel Sri. Sandeep Huilgol for respondent.

6. Apart from urging several contentions Learned AGA for the revision petitioner-Revenue, submitted that the order passed by the Karnataka Appellate Tribunal is erroneous and contrary to the provisions of the KVAT Act, 2003. It was contended that the respondent-assessee had failed to maintain or produce any segregated accounts to establish that the petroleum products purchased from registered dealers within the State were used exclusively in the manufacture of goods sold locally. Since the inputs procured from various sources were consumed in a common manufacturing process and the finished products were disposed of by way of local sales, inter-State sales, exports and stock transfers, the assessee's entitlement to input tax rebate was required to be determined strictly in accordance with Section 17 of the KVAT Act read with Rule 131 of the KVAT Rules, 2005. According to the revenue, the Tribunal committed an error in placing reliance upon

Section 14 of the Act and in holding that the assessee had correctly determined the admissible and inadmissible portions of input tax credit relating to furnace oil.

7. It was further submitted that the Tribunal failed to appreciate the calculations adopted by the Assessing Authority and affirmed by the First Appellate Authority while determining the proportionate input tax rebate available to the assessee. The Tribunal, according to the State, wrongly interfered with the findings of the authorities below and incorrectly concluded that there was no excess claim of input tax credit on furnace oil used in captive power generation and manufacture of taxable goods.

8. According to the learned AGA, for the purchase of raw materials, VAT is paid at varying rates. On furnace oil, 4% VAT is payable under the VAT Act, whereas on natural gas and light diesel oil, the rate of VAT prescribed and payable is 6.5%, since the same are used for the manufacture of the final products. By placing reliance on Section 11, he submits that the tax credit claimed under that section shall be subject to the provisions of sub-sections (2) to (12), and the tax credit shall be calculated in such manner as may be prescribed, and the

registered dealer who intends to claim the tax credit shall maintain the registers and books of account in such manner as may be prescribed. To buttress his arguments he relied on judgment of the Hon'ble Supreme Court in the case of **STATE OF GUJARAT VS RELIANCE INDUSTRIES LIMITED**, reported in **(2017) 16 SCC 28**.

9. Learned counsel also placed reliance upon the decision of this Court in STRP No.118/2016 arising out of the assessee's own case for the earlier assessment periods and contended that the issue stood concluded in favour of the Revenue. On these grounds, it was urged that the order passed by the Tribunal be set aside and the orders of the Assessing Authority and the First Appellate Authority be restored.

10. *Per contra*, learned counsel appearing for the respondent-assessee supported the order passed by the Karnataka Appellate Tribunal and contended that the same does not suffer from any error of law or perversity warranting interference in revisional jurisdiction. It was submitted that the Assessing Authority had already examined the issue relating to eligibility of input tax rebate on furnace oil in earlier proceedings and, after considering the detailed rectification

application and supporting calculations furnished by the assessee, had accepted the claim by order dated 15.04.2011. In such circumstances, the subsequent initiation of proceedings culminating in the order dated 16.10.2015 under Section 69(1) of the KVAT Act was clearly based on a mere change of opinion and not on any mistake apparent from the record, as required for invoking the rectification jurisdiction under the said provision. It was therefore contended that both the Assessing Authority and the First Appellate Authority had acted without jurisdiction in reopening a concluded issue.

11. It was further contended that the Tribunal had correctly appreciated the scope and ambit of Section 17(4) of the KVAT Act, 2003 and Rule 131 of the KVAT Rules while determining the admissibility of input tax credit on petroleum products used as fuel in the manufacturing process. The assessee had furnished complete and consistent calculations reflecting admissible and inadmissible input tax credit, which were duly considered by the Tribunal, which were erroneously ignored by the authorities below. It was thus submitted that the findings recorded by the Tribunal are based on proper appreciation of facts and law and do not call for interference by this Court.

12. While admitting the petition, following substantial question of law was framed by this Court:

"Whether the Karnataka Appellate Tribunal has erred in passing the impugned order, holding that there is no error on the part of the appellant in determining inadmissible input tax credit for purchase of Furnace oil, which is purchased both locally and interstate."

13. As could be gathered from the records, the revenue has taken up for reassessment the appellant's case for the tax period of April 2008 to March 2009 under Section 39(1). Accordingly, a notice was issued on 28.01.2011, wherein the issue of input tax rebate on furnace oil/fuel oil was raised, and the input tax claim on furnace oil was disallowed by its order dated 11.03.2011. Against the same, the respondent filed a rectification application under Section 69 by furnishing the calculation for input tax rebate on furnace oil. Thereafter, the Appellate Authority dropped the proposal to disallow the input tax rebate and passed an order under Section 69(1) on 15.04.2011, raising *nil* demand. However, again, a notice was issued under Sections 69 and 39(1), read with Sections 72(2) and 36 of the KVAT Act, seeking reassessment for the period 2008-09, disallowing the input tax credit on petroleum products to the tune of Rs.39,13,873/-, besides levying penalty and

interest of Rs.3,91,387/- and Rs.41,11,831/-, respectively. Though a reply to the notice was sent by the respondent-assessee, the Appellate Authority issued the final rectification order under Section 69(1) on 16.10.2015, demanding a total sum of Rs.10,06,308/-. Hence, the dispute arose.

14. Before dwelling into the legality of the method adopted for determining the non-deductible input tax for the tax periods in question by the Appellate Authority, as confirmed by the First Appellate Authority, it is relevant to observe that the revenue has failed to question the assessee's method of input tax credit computation for the years 2006-07 and 2007-08, which was confirmed by the Tribunal by its common order dated 13.07.2015 in STA Nos.1842 to 1853/2014, and for the year 2009-10 in STA No.248/2017. In all these appeals, the Tribunal had already conclusively decided the identical issues relating to input tax rebate on furnace oil in favour of the assessee in its own case, wherein the assessee's method of computation under Sections 14, 11(a)(6) and 17 of the KVAT Act, read with Rule 131 of the KVAT Rules, was upheld. Further, for the subsequent years 2013-14 and 2014-15, the Tribunal passed orders in favour of the assessee dated 26.09.2018 in STA Nos.392 and 393/2017. Thus, it is clear that

the method of computation adopted by the assessee stands consistently upheld by the Tribunal across the assessment years 2006-07 to 2014-15, out of which the revenue has challenged the computation only for the year 2008-09, that too in the year 2015, i.e., after a lapse of 7 years. The Hon'ble Supreme Court in the case of **COMMISSIONER OF CENTRAL EXCISE, NAVI MUMBAI VS AMAR BITUMENT AND ALLIED PRODUCTS PVT. LTD AND OTHERS** reported in **(2010) 13 SCC 76**, held in para 5 and 6 as under ;

"5. This Court in a catena of cases has consistently taken the view that if an earlier order is not appealed against by the Revenue and the same has attained finality, then it is not open to the Revenue to accept the judgment/order on the same question in the case of one assessee and question its correctness in the case of some other assessee. The Revenue cannot pick and choose.

6. It was held in Birla Corpn. Ltd. , as under:

"5. In the instant case the same question arises for consideration and the facts are almost identical. We cannot permit the Revenue to take a different stand in this case. The earlier appeal

involving identical issue was not pressed and was therefore, dismissed. The respondent having taken a conscious decision to accept the principles laid down in Pepsico India Holdings Ltd. cannot be permitted to take the opposite stand in this case. If we were to permit them to do so, the law will be in a state of confusion and will place the authorities as well as the assesseees in a quandary."

15. On collating the facts and findings of the above case with the facts and circumstances of the present case, we are of the view that, since the issue raised by the revenue has been conclusively decided in favour of the assessee across multiple assessment years in the assessee's own cases, as well as in other cases, i.e., **M/S LAMINA SUSPENSION PRODUCTS LTD., MANGALURU V. STATE OF KARNATAKA**, reported in **2012 (74) Kar.L.J. 512**, and the revenue having not challenged the same, but having challenged the order of the Tribunal only for the year 2008-09, wherein the assessee has adopted the same methodology for computation of input tax rebate, the action of the revenue certainly amounts to "pick and choose", as it has taken a contrary stand in the present case. Hence, we are of the view that the revenue is bound by

the rule of consistency and is estopped from taking such a stand. Therefore, without dwelling into the methodology adopted for computation of input tax credit, it is sufficient to hold that, on this ground alone, the revision petition filed by the revenue is liable to be dismissed by confirming the order passed by the Tribunal. Accordingly, we answer the point raised above in the negative.

16. In the result, the Sales Tax Revision Petition is ***dismissed.***

**SD/-
(S.G.PANDIT)
JUDGE**

**SD/-
(RAJESH RAI K)
JUDGE**

PKS/V