

प्रेषक,

आयुक्त राज्य कर,
उत्तर प्रदेश ।

सेवा में,

अपर आयुक्त, राज्य कर, गौतमबुद्धनगर, जोन-नोएडा ।
समस्त अपर आयुक्त ग्रेड-1, राज्य कर, उ०प्र०
समस्त अपर आयुक्त ग्रेड-2, राज्य कर, उ०प्र०

(वाद अनुभाग)

लखनऊ :: दिनांक :: 16 अप्रैल, 2025

महोदय,

संयुक्त आयुक्त (उ०न्याय०कार्य) राज्य कर, प्रयागराज के पत्र संख्या-5897 दिनांक-28/03/2025 (प्रति संलग्न) द्वारा अवगत कराया गया है कि मा० उच्च न्यायालय, इलाहाबाद में दाखिल पुनरीक्षण वाद संख्या 10/2025 कमिश्नर, वाणिज्य कर उत्तर प्रदेश, लखनऊ बनाम सर्वश्री जानकी इण्डस्ट्रीज, नई बस्ती, बरेली (connected with STRE No. 142/24, 143/24, 144/24, 145/24, 146/24, 147/24, 149/24, 2/25, 9/25 AND 92/24) में दिनांक 24.03.2025 को पारित निर्णय के माध्यम से विभाग द्वारा दाखिल पुनरीक्षण वाद को ALLOWED कर दिया गया है।

मा० उच्च न्यायालय ने पारित निर्णय में यह माना है कि "किसी भी पंजीकृत व्यापारी द्वारा, जो अनाज, दलहन, तिलहन आदि का खरीद-बिक्री का कार्य करता हो, दिनांक 30.06.2017 को वैट अधिनियम के अंतर्गत पंजीयन समाप्त होने के पश्चात घोषित अंतिम रहतिया पर ITC को वैट अधिनियम की धारा 13(6) के अंतर्गत उल्लिखित करना चाहिए।"

निर्णय के मुख्य अंश निम्नवत् है :-

"20. The issue involved in these cases are as to whether after introduction of new GST Act from 01.07.2017, the registered dealers were entitled for the benefit of unutilized ITC accrued under the UP VAT Act though having closing stock.

22. Perusal of section 13(1)(a) of the VAT Act clearly demonstrates that the earned ITC can be utilized on the sale, subject to the conditions as mentioned in the table. The ITC can only be claimed on fulfillment of certain conditions as contemplated herein-above. Section 13(6) of the VAT Act and rule 21(1)(y) of the UP VAT Rules contemplate that in the event ITC is unutilized and the registered dealer discontinued its business and the closing stock is there, then the dealer has to debit the unutilized ITC. The registered dealer cannot be permitted to utilize earned ITC for the said period.

23. Section 15(5) of the VAT Act is also quoted below :- "Section 15. Net amount of tax payable and treatment of input tax credit exceeding tax liability: (5) Notwithstanding anything contained in sub-section (4) where a dealer discontinues business, refund of any excess amount of admissible input tax credit relating to last tax period of the assessment year during which business has been discontinued shall be allowed within Ninety days after the date of passing of assessment order for such assessment year."

24. The aforesaid section contemplates for refund of excess amount of admissible ITC, if it exceeds tax liability relating to last tax period of the assessment year during which the business has been discontinued. 25. The case in hand, it is admitted between the parties that the opposite party has not sold the purchased goods and there was closing stock. Until & unless the last tax period of the assessment year during which business has been discontinued after adjustment of the tax liability by-passing the assessment order for such assessment year, if any excess amount of ITC is left, then 12 only section 15(5) of the VAT Act will come into play and not otherwise.

33. This Court in M/s Farooq Agencies (supra) has specifically held that by operation of law, the business of the registered dealer stood discontinued and therefore, similar analogy will be applicable in the case in hand. The opposite parties (registered dealers) discontinued its business under the VAT Act after 30.06.2017 by operation of law.

34. But the Tribunal in the impugned order, in its wisdom, has allowed the appeals of the opposite party by referring that the judgement cited by the revisionist, i.e., M/s Farooq Agencies (supra), is not applicable to the fact of the case.

35. The Tribunal miserably failed in not following the legal binding precedent given by this Court in the case of M/s Farooq Agencies 15 (supra). The Tribunal, further erred in observing that section 13 of the VAT Act and rule 21 of the Rules are also not applicable in the issue under consideration. Section 13 of the VAT Act & Rule 21 of the VAT Rules, referred to herein-above, clearly contemplate the situation to deal with the closing stock and unutilized ITC of the registered dealers stood discontinued its business, as held herein-above.

36. Further, the opposite party has not brought on record any evidence upto the Tribunal that they have filled TRANS-1. Once TRANS-1 form was not filled, the proceedings initiated by the Assessing Authority cannot be said to be bad in law. Once the business under the VAT Act was discontinued on 30.06.2017 by operation of law, it becomes the dealer's duty to reverse/debit the ITC as per section 13 (6) of the VAT Act.

37. Some judgements, relied upon by the counsel for the opposite parties, were in relation to the period when the TRANS-1 was unable to be uploaded due to technical glitch, where the Court passed orders and some observation was given, which cannot be treated as precedent.

38. The other judgements, which have been cited by the counsels for the opposite parties, pertain to Central Excise Act/MODVAT credit to be availed, but the counsels could not show any provision under the Central Excise Act that are similar to VAT Act. Section 13(6) of the VAT Act, read with rule 21 specifically provides that when the closing stock on the date of discontinuation of business is available, what treatment has given to unutilized/accumulated ITC.

40. Further, section 13(6) of the VAT Act contemplates debiting of ITC earned/unutilized on the date of discontinuation of the business, but the opposite party utterly failed to adhere to the said section. In absence of any compliance by the opposite party as contemplated under section 13(6) of the VAT Act, the judgements cited herein-above in paragraph nos. 11 to 14, by the counsel for the opposite party are not of any help to them.

41. Once the opposite party - registered dealers, by operation of law, discontinued its business, it was the duty cast upon the opposite party dealer to debit their ITC as contemplated under section 13(6) of the VAT Act. The Tribunal has failed in its duty while allowing the appeal of the opposite party by overlooking the provision of section 13(6) of the VAT Act.

42. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court, the impugned judgements & orders passed by Commercial Tax Tribunal in these revisions cannot be sustained in the eyes of law.

43. Accordingly, all the revisions are allowed.

44. The impugned judgements & orders in these revisions passed by the Commercial Tax Tribunal, Bareilly Division, Bareilly are hereby set aside.

45. The questions of law are answered in favour of the Revenue and against the opposite party."

अतः उक्त महत्वपूर्ण निर्णय को इस पत्र के साथ संलग्न कर इस निर्देश के साथ प्रेषित किया जा रहा है कि स्वयं से अवगत होते हुए अपने अधीनस्थ समस्त अधिकारियों को भी उक्त निर्णय से अवगत कराये तथा मा. उच्च न्यायालय द्वारा दिये गये उक्त निर्णय का संज्ञान लेते हुए कार्यवाही सुनिश्चित की जायें।
संलग्नक-उपरोक्तानुसार।

(डा० नितिन बंसल)
आयुक्त राज्य कर,
उत्तर प्रदेश।

प०प०सं० व दिनांक उक्त।

1- अपर आयुक्त ग्रेड-1/2 (उ०न्याय०कार्य), राज्य कर, प्रयागराज/लखनऊ को इस निर्देश के साथ प्रेषित कि विभागीय पैरवी में मा. उच्च न्यायालय द्वारा पारित निर्णय का उपयोग किया जायें।
2- संयुक्त आयुक्त (आई०टी०), राज्य कर, मुख्यालय लखनऊ को इस निर्देश के साथ प्रेषित कि उक्त परिपत्र को विभागीय वेबसाइट पर प्रकाशित करने का कष्ट करें।

15-04-15
संयुक्त आयुक्त (वाद) राज्य कर,
मुख्यालय, लखनऊ।

प्रेषक,

संयुक्त आयुक्त (उ०न्या०कार्य)
राज्य कर, प्रयागराज।

सेवा में,

आयुक्त, राज्य कर
उत्तर प्रदेश, लखनऊ।

पत्रांक : 5897/अ०आयु०ग्रेड-1 उ०न्या०कार्य रा०क०प्रयागराज।/दिनांक 28 मार्च, 2025।

महोदय,

कृपया मा० उच्च न्यायालय, इलाहाबाद में दाखिल पुनरीक्षण वाद संख्या 10/2025 कमिश्नर, वाणिज्य कर उत्तर प्रदेश, लखनऊ बनाम सर्वश्री जानकी इण्डस्ट्रीज, नई बस्ती, बरेली (connected with STRE No. 142/24, 143/24, 144/24, 145/24, 146/24, 147/24, 149/24, 2/25, 9/25 AND 92/24) में पारित निर्णय का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा दिनांक 24.03.2025 (प्रति संलग्न) को पारित निर्णय के माध्यम से विभाग द्वारा दाखिल पुनरीक्षण वाद को ALLOWED कर दिया गया है। मा० उच्च न्यायालय ने पारित निर्णय में यह माना है कि किसी भी पंजीकृत व्यापारी द्वारा, जो अनाज, दलहन, तिलहन आदि का खरीद-विक्री का कार्य करता हो, दिनांक 30.06.2017 को वैट अधिनियम के अंतर्गत पंजीयन समाप्त होने के पश्चात घोषित अंतिम रहतिया पर ITC को वैट अधिनियम की धारा 13(6) की अंतर्गत उत्क्रमित करना चाहिए।

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57
01.04.2025

श्री शोभिन
D.C. (A.F.)

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अतः उक्त महत्वपूर्ण निर्णय को इस पत्र के साथ संलग्न कर इस निवेदन के साथ प्रेषित किया जा रहा है कि महोदय स्वयं भी अवगत होते हुए अपने अधीनस्थ प्रदेश के समस्त अधिकारियों को भी उक्त निर्णय से अवगत कराने हेतु निर्देशित करने की कृपा करें जिससे विभाग के प्राधिकरण में लम्बित सम्बन्धित अन्यवादों का निस्तारण प्राधिकरण स्तर पर ही राजस्व हित में किया जाना सम्भव हो सके।
संलग्नक: निर्णय की प्रति।

(डी०के० वर्मा)

संयुक्त आयुक्त (उ०न्या०कार्य)

राज्य कर, प्रयागराज।