IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF FEBRUARY, 2021

PRESENT

THE HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE MR. JUSTICE V.SRISHANANDA

WRIT APPEAL NO.309/2020

C/W

WRIT APPEAL NO. 386/2020

WRIT APPEAL NO. 4039/2019 (T-RES)

IN WRIT APPEAL NO.309/2020

BETWEEN:

M/S MFAR CONSTRUCTIONS PVT. LTD.,
NO.8 AND 8A, AVS COMPOUND,
80 FEET ROAD, 4TH CLOCK,
KORAMANGALA,
BENGALURU-560034
REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER,
SRI FAYAZ KAMALUDDIN,
S/O LATE K.P.KAMALUDDIN,
AGED ABOUT 50 YEARS.

...APPELLANT

(BY SRI.G.SHIVADASS, SR. ADV., FOR
SRI.H.Y.HARISH, ADV.)

AND:

1. THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES ZONE-II
6TH FLOOR, VANIJYA THERIGE KARYALAYA-1

GANDHINAGAR,
BENGALURU-560 009

2. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
AUDIT-4.5, DVO-4,
ROOM NO.204
2ND FLOOR, VTK-2,
KORAMANGALA,
BANGALORE-560 047

3. STATE OF KARNATAKA
DEPARTMENT OF FINANCE,
BY ITS SECRETARY,
VIDHANA SOUDHA,
BENGALURU-560 001

... RESPONDENTS

(BY SRI.VIKRAM HUILGOL, AGA)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 06.12.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.35989 TO 36000/2016, IN SO FAR AS APPELLANT IS CONCERNED AND ETC.

IN WRIT APPEAL NO.386/2020

BETWEEN:

M/S ANS CONSTRUCTIONS LTD.,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT HAVING
ITS OFFICE AT NO.201,
MATHA RESIDENCY ASHOK NAGAR,
KOTTARA,
MANGALORE-575006
REPRESENTED BY ITS
AUTHORIZED SIGNATORY,
SRI RAGHUNATH PRASAD,
S/O SRI RAGHUNATH,
AGED ABOUT 57 YEARS,

...APPELLANT

(BY SRI.G.SHIVADASS, SR. ADV., FOR
SRI.H.Y.HARISH, ADV.)

AND:

1. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, (AUDIT-2), DIVISION VAT OFFICE, MAIDAN ROAD, MANGALORE-575 001

2. STATE OF KARNATAKA DEPARTMENT OF FINANCE, BY ITS SECRETARY, VIDHANA SOUDHA, BENGALURU-560 001

… RESPONDENTS

(BY SRI.VIKRAM HUILGOL, AGA)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 06.12.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.32896-32919/2016, IN SO FAR AS APPELLANT IS CONCERNED AND ETC.

IN WRIT APPEAL NO.4039/2019

BETWEEN:

M/S MANGALORE FORCE
URWA STORE ROAD
KOTTARA CHOWKI
MANGALORE-575 005
A PARTNERSHIP FIRM
REPRESENTED BY ITS PARTNER
SRI MUKESH M
S/O SRI SHEKHAR M
AGED ABOUT 47 YEARS

…APPELLANT

(BY SRI.G.SHIVADASS, SR. ADV., FOR
SRI.H.Y.HARISH, ADV.)

AND:

1. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES -ENFORCEMENT-02 WEST ZONE VANIJYA THERIGE BHAVANA

MAIDAN ROAD
MANGALURU-575 001

2. STATE OF KARNATAKA
DEPARTMENT OF FINANCE
BY ITS SECRETARY
VIDHANA SOUDHA
BENGALURU-560 001

… RESPONDENTS

(BY SRI.VIKRAM HUILGOL, AGA)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER DATED 06.12.2019 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION NO.33372/2018 AND ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, THIS DAY **SATISH CHANDRA SHARMA J.,** DELIVERED THE FOLLOWING:

JUDGEMENT

Regard being had to the similitude in the controversy involved in all the three cases, they were heard analogously together and a common judgment is being passed.

2. The present appeals are arising out of the common order dated 6.12.2009 passed in WP.Nos.35989 to 36000/2016 (*M/s MFAR Constructions Pvt. Ltd. vs. Additional Commissioner of Commercial Taxes and Others)*, passed in WP.Nos.32896-32919/2016 *(M/s ANS Constructions Ltd., vs. Deputy Commissioner of Commercial Taxes (Audit) and* passed in

WP.No.33372/2018 (*M/s. Mangalore Force vs. the Assistant Commissioner of Commercial Taxes – Enforcement -02 & Anr.,*).

3. The facts of WA.No.309/2020 are narrated as under:

The facts of the case reveal that the appellant before this Court is a private limited company registered under the Companies Act and is engaged in the business of execution of civil works, Contract like construction of apartments and commercial complexes. The company is a registered dealer having TIN No.29420098042. The company is filing returns of turnover keeping in view the statutory provisions as contained under the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as the KVAT Act).

4. That in respect of financial year 2009-2010 the appellant – company had filed returns of turnover claiming the deduction allowable under the provisions of KVAT Act r/w the provisions of the Karnataka Value Added Tax Rules, 2005 (hereinafter referred to as the KVAT Rules). The appellant – company had claimed input tax rebate to the extent of Rs.4,22,34,730.00. It has been further stated that keeping in view the turnover of the appellant – company as it exceeded Rs.100 lakhs during the year 2009-2010, the appellant was under

an obligation to get its books of accounts audited by a Chartered Accountant and to submit a copy of audited statement of accounts in the prescribed manner in terms of sub-section (4) of Section 31 of the KVAT Act r/w sub-rule (3) of Rule 34 of KVAT Rules. Sub-rule (3) of Rule 34 of KVAT Rules provides nine months time after the end of relevant year for the purposes of submission of the audited statement of account. The appellant – company accordingly, got the books of accounts audited through a Chartered Accountant and furnished the audited statement of accounts in Form VAT 240 before the concerned LVO.

5. It has been further stated by the appellant – company that the audited statement of accounts in Form VAT 240 furnished by the appellant – company reflected additional output tax payable and the additional input tax allowable under Section 10 in terms of Clause 10 of Form 240. Clause 10 of the prescribed Form 240 specifically provides for 'summary of additional tax liability or additional refund due to the dealer on audit for the year. It has been further stated that immediately after Clause 10, prescribed Form contained a provision enabling the Chartered Accountant to advise the dealer to file revised returns for the months of April to March in order to pay differential tax liability or to claim refund or to revise the opening and closing balance of

input tax credit. However, the said provision enabling the Chartered Accountant to advise the dealer to revise the return has been omitted by Notification dated 24.9.2012 w.e.f., 24.9.2012.

6. The appellant – company has furthered stated that based upon the assignment issued by the Commissioner of Commercial Taxes, the Deputy Commissioner of Commercial Taxes, Audit – 4.5, DVO-4, initiated reassessment proceedings under Section 39(1) of the KVAT Act. The Deputy Commissioner after due verification of the books of accounts, the purchase register and the opinion available in the annual audited statement of accounts in Form VAT 240, concluded the assessment vide order dated 27.2.2012 for the year 2009-2010 under Section 39(1) r/w 72(2) and Section 36(1) of the KVAT Act. The appellant – company has further stated that in the reassessment order while accepting the additional tax liability declared by the appellant, the Deputy Commissioner of Commercial Taxes has correctly allowed the input tax rebate at Rs.4,98,45,046.00 as reported in the audited statement of accounts in form 240 as against the input tax rebate of Rs.4,22,34,730.00 as claimed in the returns of turnover. It has been further stated that the Deputy Commissioner of Commercial Taxes allowed the

differential input tax rebate of Rs.76,10,315.00 based on the said Form 240.

7. The appellant has further stated that the Commissioner of Commercial Taxes issued a notice on 26.12.2015 under Section 64(1) of KVAT Act calling upon the appellant to show cause as to why revisional proceedings should not be concluded to set aside the reassessment order passed by the Deputy Commissioner of Commercial Taxes to the extent of wrong allowance of input credit as per Form 240 and to demand payment of tax along with interest and penalty. The appellant had filed a detailed reply to the said notice on 11.01.2016 *inter alia* contending that all goods procured by payment of tax have been used in the execution of works contract and duly accounted in the books of accounts. It was further stated that there is no restriction under Section 10 or any other provision of the KVAT Act with respect of claiming of input tax rebated based on Form VAT 240. It was further stated that the time limit specified in Section 35(4) for filing revised return is not applicable to the case of the appellant and no error has been committed by the Deputy Commissioner of Commercial Taxes while passing an order in the matter.

8. The appellant's grievance is that the Commissioner of Commercial Taxes has wrongly denied the input tax credit based upon the information available in Form No.240 by placing reliance upon the judgment delivered by this Court in the case of *Centum Industries Ltd.* The appellant has further stated that the Commissioner of Commercial Taxes has passed the order revising the reassessment order to the extent of input tax credit allowed by the Deputy Commissioner of Commercial Taxes on the basis of From 240 without considering the objections filed by the appellant and he has further erroneously directed the Deputy Commissioner of Commercial Taxes to demand the differential input tax rebate allowed on the basis of Form 240 and to initiate proceedings under Section 36 and 72(2) of the KVAT Act.

9. The appellant before this Court has also stated that the Commissioner of Commercial Taxes has denied input tax credit by placing reliance upon a judgment delivered by this Court in the case of *State of Karnataka vs. Centum Industries Pvt.Ltd.,* reported in 2014 (80) KLJ 65 by giving an erroneous interpretation to the said judgment.

10. The appellant being aggrieved by the order of the Commissioner of Commercial Taxes preferred writ petitions before

this Court and the learned Single Judge after hearing the parties at length has dismissed the writ petition by passing a common order.

11. Paragraphs 25 to 31 of the order passed by the learned single Judge in WP.No.35989-36000/2016 and connected matter read as under:

> *25. Rule 34 of the Rules provides for audit and submission of accounts. The said rule is extracted hereunder for ready reference:*
>
> *"**34. Audit & submission of accounts. –***
>
> *(1) Every registered dealer who is, not a company defined under the Companies Act, 1956 (Central Act 1 of 1956) or a company incorporated outside India and required to have his accounts audited under sub-section (4) of section 31 shall have his accounts audited by a Tax Practitioner enrolled under rule 163 for a period of not less than three years or under section 36 of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) for a period of not less than three years on the date of such audit or by a Chartered Accountant [or a Cost Accountant].*
>
> *(2) Every other registered dealer who is required to have his accounts audited under sub-section (4) of section 31 shall have his accounts audited by a Chartered Accountant.*
>
> *(3) The audited statement of accounts shall be submitted in Form VAT 240 to the jurisdictional Local VAT officer or VAT sub-officer within six months after the end of the relevant year."*
>
> *26. Thus, it is clear that only in certain cases exceeding the total turnover fixed under Section 31[4] accounts of*

the dealer has to be audited. In terms of Rule 34[3], this audited statement of accounts shall be submitted in Form VAT 240 to the competent authority within 9 months after the end of the relevant year. Form VAT 240 is only the audited statement of accounts issued by the Chartered Accountant/Cost Accountant/Tax Practitioner, as the case may be which would facilitate the assessment but the same would not be a construed as a return to compute the net tax liability under Section 10[3]. The substantive provision of the Act, Section 10[3] has to be read harmoniously with the procedural provision of filing of the return under Section 35. Filing of return within the time prescribed under Section 35 is mandatory. It is on the basis of such return, the tax liability has to be determined and payment to be made by the registered dealer. Filing of returns is sine-qua-non to determine the net tax liability under Section 10[3] after deducting the input tax from the output tax. Section 10[4] plays an important role in calculating the amount of net tax to be paid or refunded wherein it is categorically specified that a tax invoice, debit note or credit note, in relation to a sale, has been issued in accordance with Section 29 and is with the registered dealer taking the deduction at the time, "any return" in respect of the sale is furnished, except paid under Sub-section [2] of Section 3 i.e., from an unregistered dealer.

27. At this juncture, it is beneficial to refer to the Division Bench judgment of this Court in the case of ***Infinite Builders and developers V/s. Additional Commissioner of Commercial Taxes [2014] 68 VST 24****, the relevant paragraphs of which are quoted hereunder:*

"44. The assessee never filed any revised return in respect of the period from April 2005 to March 2006 nor claimed any input credit return, but, on the other hand only filed nil tax liability return. The assessee persisted and did not file any revised return or anything at all even after inspection, notice etc. In this view of the matter, there was nothing at all before the assessing authority to provide any input tax deduction in favour of the assessee for the entire period from April 2005 to March 2006. So it is urged by the appellant/assessee that even long after the expiry of the period in which the revised return could have been filed, the fact remains that there is no response by filing any revised returns. In such a position, we are of the view that the first appellate authority did go out of its duties and responsibilities and acted out of its jurisdiction to entertain a claim for deduction of input tax rebate in favour of the assessee by accepting some material, purporting it to be based on the books of accounts and the purchase invoices etc and in granting reliefs to the assessee. We find, it is a case of the first appellate authority acting more loyal than the king, even though a claim had not been put forth by the assessee through the returns, the first appellate authority has ventured to allow the appeals and grant relief to the assessee, contrary to statutory provisions!

54. The Act specifically provides for the manner in which the extent of purchases made by an assessee from registered dealer and the claim for corresponding tax made at the time of purchase can be claimed by prescribing a specific mode and that is not complied by the assessee. Therefore, even assuming that the benefit of reduction of Section 3(2) tax liability as given by the appellate authority is not disturbed by the revisional authority, it cannot be a ground for extending such a benefit in respect of input tax rebate either by comparison or otherwise.

56.In so far as Mr Keshava Murthy's submission that in a best judgment assessment, where a return is not accepted and is based on the information as disclosed in the books of accounts

etc., the claim in the returns or non-claiming in the returns cannot be of much significance, we find that claim for input tax credit can only be in specified form and not in a generalised form and therefore, the arguments cannot succeed. We have discussed this aspect elaborately as above. Therefore, on comparison of provisions of Section 38(3) of the Act, the benefit cannot be extended by overlooking the statutory requirements under Section 10(4) of the Act read with sub-sections (1) and (4) of Section 35 of the Act.

57. In the circumstances we find that the impugned order passed by the Commissioner setting aside the appellate authority's order for the periods April 2005 to March 2006 and April 2006 to November, 2006 and restoring the assessment order cannot be said to be suffering from any illegality or want of jurisdiction and therefore, the appeals to that extent are dismissed. The Judgments relied cannot further the case of the appellant/assessee, as when a statutory provision mandates compliance in a particular manner in examining as to whether the compliance is secured or otherwise a broad based approach is not called for, more so in tax matters, where the liability is strictly as per the sections and compliance, both on the part of the revenue and on the part of the assessee, also should be strictly in terms of the statutory provisions. An assessee pays penalty if it violates the statutory provision and likewise the revenue also loses revenue unless it adheres to the requirements of the statutory provision. It is for this reason we are not impressed by the submission on behalf of the assessee that there was no need for taking a technical approach or hyper technical approach and if the appellate authority had taken a pragmatic and plausible view, the revisional authority should not have disturbed the same or interfered with the same, is not accepted."

28. In the judgments referred to by the learned counsel for the petitioners discussed supra, the claim of input tax credit was made in the subsequent months/belatedly in the returns filed. In the present case,

it is not in dispute that no such claim of input tax credit is made by the assessee in filing the monthly returns but the same is claimed on the basis of audited statement of accounts, Form VAT 240 – certificate issued by the Chartered Accountant/Cost Accountant/Tax Practitioner within a period of 9 months after the end of the relevant year.

29. Return is the basis on which the computation of tax liability has to be made including the input tax credit in terms of Section 10[3] and Section 10[4]. It is not in dispute that no input tax credit has been claimed by the petitioners in any of the return filed during the relevant tax periods, merely on the audited statements filed by the Chartered Accountant/Cost Accountant/Tax Practitioner, no input tax credit can be allowed. If such an argument if accepted, filing of monthly returns would be an empty formality making the provisions of Section 35 to 56 as well as Section 72 of the Act redundant. The arguments of the learned counsel that the amendment brought to Section 10[3] with effect from 01.08.2008 substituting the words under the provisions of "the Act" for the words "Chapter V" implies to allow input tax credit on the basis of Form VAT 240 even in the absence of claim of input tax credit in the return filed by the assessee is wholly misconceived. By giving such an interpretation, the entire gamut of taxation mandating the strict adherence of filing returns, the foundation for assessment to determine the net tax liability gets uprooted, effacing Chapter V and the penal provision under Section 72 disturbing the scheme of the Act which is not the intent and object of the amendment brought to Section 10[3] of the Act with effect from

01.08.2008. In my considered opinion, the amendment would suggest strict compliance of all the provisions of the Act to claim the input tax credit. Section 10[3] cannot be read in isolation ignoring Section 10[4] read with Section 35. Any statement/certificate facilitating the assessment would not assume supremacy over the relevant substantial provisions. Such opinion of the Chartered Accountant/Cost Accountant/Tax Practitioner would only be a recommendatory but cannot obliterate the mandatory provisions of filing of returns to compute the net tax liability under Section 10[3] and 10[4] of the Act.

30. It is apparent that all the registered dealers are not required to file such Form VAT 240 but only depending on the total turnover for the year, Form VAT 240 has to be filed. In cases where no such VAT 240 is filed, it would certainly result in discrimination if VAT 240 has to be accepted as the basis for determining the input tax credit. VAT Form 240 cannot replace the "return".

31. At the cost of repetition, it is reiterated that none of the judgments referred to, by the learned counsel for the petitioners would permit the registered dealer to claim the input tax credit on the basis of the VAT Form 240 without filing the return. When the statutory provision mandates compliance in a particular manner, it should be done in that particular way alone not by any other method. "Expressio unius est exclusio alterius" is the well settled legal maxim followed by the Hon'ble Courts without any exception. Hence, this Court is of the considered view that no input tax credit can be availed independent of the claim in the returns merely filing Form VAT 240.

For the aforesaid reasons, the writ petitions are dismissed."

12. Learned counsel for the appellant has vehemently argued before this Court that the order passed by the learned Single Judge is illegal, without appreciation of legislative intent and the notification issued by the State Government, it is unsustainable and deserves to be set aside. The learned counsel has also taken a ground that the interpretation adopted by the first respondent in the impugned orders under Section 10(3) of KVAT Act and upheld by the learned Single Judge is erroneous, unreasonable and renders provision unconstitutional and ultravires the scheme of the KVAT Act and it also runs contrary to the object of the KVAT Act.

13. Another ground has been raised by the appellant – company stating that Entry 54 of List II of VII Schedule to the Constitution provides for levy of tax on sale or purchase of goods and the said entry contemplates levy of tax at single point and there is no provision for double levy of tax on the sale of goods. Originally the Sales Tax Act provided for levy of tax at the first point of sale and exempted the levy at subsequent points. However, there was lot of revenue loss on account of the value

addition made to the goods and therefore, the Scheme of VAT Act provided for levy of tax at each point of sale, but to avoid violation of constitutional provisions the scheme provided for set off of input tax paid on previous purchases. It is contended that if the input tax paid by the registered dealers is not allowed to be set off on technical grounds, such an act would be ultra vires the Constitution since it amounts to double levy of VAT on the sale of same goods and it also results in cascading effect. It is also argued that keeping in view the statement of objects and reasons of KVAT Act, the order passed by the learned Single Judge denying input tax credit on technicalities results in levy of VAT on subsequent purchases, thus negates the set off scheme contemplated under the VAT Act in order to avoid double taxation.

14. The learned counsel has also argued before this Court that the learned Single Judge has failed to appreciate that sub-section (4) of Section 10 provides for circumstances under which the deduction of input tax could be restricted. According to the said provision, deduction of input shall not be allowed unless tax invoice in accordance with Section 29 is issued and the same is available with the registered dealer claiming the deduction at the time of furnishing the returns in respect of the sale. It has been further contended that once the appellant has satisfied that he

was in possession of the tax invoice issued in accordance with Section 29 at the time of filing of the returns and that the taxes paid to a registered dealer, it would be sufficient compliance and there is no mandatory requirement that the said input tax rebate is to be claimed in the returns of turnover filed.

15. It has been further argued that the learned Single Judge has erred in law and on facts in not appreciating that filing of returns of turnover is in order to declare the total and taxable turnover and the net tax payable by a dealer. The correct tax liability if any is allowed to be modified or declared in the audited annual statement to be furnished in terms of Section 31 r/w 34. Once it is so declared in the audited annual statement in Form Vat 240 the correct tax liability shall be determined by the Additional Commissioner of Commercial Taxes in the reassessment proceedings after considering the books of accounts, the returns filed and also declarations made in the annual audit statement in Form VAT 240.

16. It has been vehemently argued that the claim of input tax rebate keeping in view Form VAT 240 is the right guaranteed to a registered dealer under the scheme of VAT Act and it cannot be denied on mere technicalities. It has also been argued that

the reliance placed by the learned Single Judge in the case of *State of Karnataka vs. Centum Industries Pvt. Ltd.,* reported in (2015) 77 VST 117 (Karn), is misconceived and arbitrary as it was the judgment prior to statutory amendment which took place in 2008.

17. The other ground raised by the learned counsel is that the learned Single Judge erred in placing reliance upon the judgment delivered in the case of *Infinite Builders and Developers vs. Additional Commissioner of Commercial Taxes,* reported in (2014) 68 VST 24, which has got no application to the facts and circumstances of the present case. It has been further argued that in the aforesaid case the Division Bench had no occasion to consider the claims made in Form VAT 240 in compliance with the provisions of Section 31 of the VAT Act at the time of reassessment and that judgment was delivered prior to the amendment by Act No.5 of 2008. It has also been argued that the learned Single Judge has erred in holding that Form VAT 240 cannot replace the returns and it will result in discrimination amongst the dealers. It has been argued that the statue provides submission of audited statements in Form VAT 240 only in respect of those dealers having turnover more than Rs.100 lakhs and therefore, as there is a special provision for dealers having

turnover of more than Rs.100 lakhs, the learned Single Judge could not have held that it will create two classes of tax payers under the KVAT Act.

18. It has also been argued by the learned Single Judge has not taken into account the subsequent judgments delivered in the case of *Sonal Apparel Pvt.Ltd., vs. State of Karnataka,* reported in 2016(85) KLJ 1 and *Kirloskar Electric Company and others vs. State of Karnataka and others,* reported in (2018) 1 GSTL (VAT) Kar.

19. Various others grounds have also been raised by the learned counsel for the appellant before this Court and he has vehemently argued that a registered dealer is entitled to claim input tax credit under the provisions of the KVAT Act on the basis of Audit Report submitted in Form VAT 240 even though such claims were not made while submitting monthly returns.

20. Reliance has also been placed upon the judgments delivered in the case of *Anantha Refinery Private Limited vs. The Assistant Commissioner of Commercial Taxes (Audit)-2, Davanagere and Ors.,* reported in 2016(4) TMI 136 - Karnataka High Court [in WP.Nos.49867-49878/2015 (T-RES)]; in the case *Corporation Bank vs. Saraswati Abharansala and Another*

(paragraphs 25 and 26), reported in 2010 (68) Kar.L.J 62 (SC); in the case of *Collector of Central Excise vs. Dai Ichi Karkaria Ltd.,(paragraph 17),* reported in (1999) 112 ELT 353 SC; in the case of *Fertilizer Corporation of India vs. State of Bihar*, reported in 1988(Sup) SCC 73; in the case of *Giridharlal Parasmal vs. State of Mysore,* reported in (1967) 20 STC 64 and in the case of *Assistant CIT vs. Rajesh Javeri Stock Borkers (P) Ltd., (paragraph 19),* reported in (2007) 291 ITR 500 and a prayer has been made to set aside the order passed by the learned Single Judge dated 6.12.2019 as well as the order passed by the Commissioner, by which he has denied the input tax credit, which was claimed based upon Form VAT 240.

21. Learned Additional Government Advocate appearing for the respondents – State has drawn the attention of this Court towards Section 35 of the KVAT Act and submitted that the returns are required to be filed by every registered dealer and is required to pay tax due on such returns within 20 days after the end of the preceding month or any other tax period as may be prescribed. It has been further contended that the revised returns can be furnished under Section 35(4) of the KVAT Act, wherein a time limit of six months is prescribed. In terms of Section 38(1), every dealer shall be deemed to have been

assessed to tax based on the returns under Section 35 of the KVAT Act. He has further argued that the registered dealer in the event of not claiming the input tax credit in the monthly returns, by filing annual statement in From VAT 240 is not entitled to claim the same on the basis of the annual statement in Form VAT 240. He has placed reliance upon the judgment delivered in the case of *Osram Surya (P) Ltd., vs. Commissioner of Central Excise, Indore,* reported in (2002) 9 SCC 20.

22. The learned Government Advocate for the State has also argued that all the registered dealers are not required to file Form VAT 240 and dealers having turnover of more than Rs.100 lakhs are required to file Form VAT 240 and in case based upon Form VAT 240 input tax credit is allowed, it will result in discrimination and that is not the intent of the legislation. He has stated that the order has been passed by the Commissioner of Commercial Taxes strictly in consonance with the statutory provisions governing the field. Hence, the question of granting relief to the appellant in respect of the input tax credit based upon Form VAT 240 does not arise.

23. Learned Government Advocate for the State placing reliance upon the judgment delivered in the case of *Osram Surya*

(P) Ltd., (supra) contended that the statue fixing a time limit for enforcement of a right does not amount to taking away the right. In the present case also there is a time limit fixed for filing input tax credit and the appellant - company has not claimed the input tax rebate within the time framework and therefore, cannot be permitted to claim input tax rebate merely because he has submitted Form VAT 240, which is an audited statement of accounts.

24. Heard the learned counsel for the parties at length and perused the record.

25. The undisputed facts of the case reveal that the appellant - company who is a registered dealer in respect of the financial year 2009-2010 filed its returns of turnover claiming the deduction allowable under the provisions of KVAT read with KVAT Rules. The company had claimed input tax credit to the extent of Rs.4,22,34,730.00. The company, as it exceeded a turnover of Rs.100 lakhs during the year 2009-2010, was under an obligation to get its books of accounts audited by a Chartered Accountant and to submit a copy of the audited statement of accounts in the prescribed manner in terms of sub-section (4) of Section 31 of KVAT Act read with sub-rule (3) of Rule 34 of KVAT Rules. Sub-

Rule (3) of Rule 34 of KVAT Rules provides nine months time after the end of relevant year for the purposes of submission of the audited statement of accounts. The appellant – company accordingly, got the books of accounts audited through a Chartered Accountant and furnished the audited statement of accounts in Form VAT 240 before the concerned LVO. The Deputy Commissioner of Commercial Taxes concluded the assessment vide order dated 27.2.2012 based upon Form VAT 240 and accepted the additional tax liability and also allowed the input tax rebate to the tune of Rs.4,98,45,046.00.

26. The Commissioner of Commercial Taxes issued a notice on 26.12.2005 initiating revisional proceedings and a final order was passed by the Commissioner of Commercial Taxes revising the reassessment order to the extent of input tax credit was allowed by the Deputy Commissioner of Commercial Taxes based upon Form VAT 240. The Commissioner of Commercial Taxes has denied the input tax credit placing reliance upon the judgment in the case of *State of Karnataka vs. Centum Industries Pvt.Ltd., (supra).*

27. In order to decide the controversy involved in the present case, the relevant provisions which are necessary to

adjudicate the matter under KVAT Act and KVAT Rules are extracted hereunder, which read as under:

"Section 2[28] of the Act defines "Return" as under:

"Return" means any return including a revised return prescribed or otherwise required to be furnished by or under this Act;"

"Tax period" is defined under Section 2[33] of the Act as under:

"Tax period" means such periods as may be prescribed;"

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.

(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.

Section 4. Liability to tax and rates thereof.-

(1) Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in.-
- *(i) Second Schedule, at the rate of once per cent;*
- *(ii) Third Schedule, at the rate of five and one half per cent; and*
- *(iii) Fourth Schedule, at the rate of twenty per cent.*

(b) In respect of.-
- *(i) declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) at the maximum rate*

specified for such goods under Section 15 of the said Act;

(ii) cigarettes, cigars, gutkha and other manufactured tobacco at the rate of twenty per cent.

(iii) Other goods at the rate of fourteen and one half per cent.

Provided that the rate of tax in respect of declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) shall be four per cent from Eighth day of April, 2011 to Eleventh day of April, 2011.

(2) Where goods sold or purchased are contained in containers or are packed in any packing material liable to tax under this Act, the rate of tax applicable to taxable turnover of such containers or packing materials shall, whether the price of the containers or packing materials is charged for separately or not, be the same as the rate of tax applicable to such goods so contained or packed, and where such goods sold or purchased are exempt from tax under this Act, the containers or packing materials shall also be exempt.

(3) The State Government may, by notification, reduce the tax payable under sub-section (1) in respect of any goods (subject to such restrictions and conditions as may be specified in the notification).

(3-A) Any notification issued under sub-section (3), shall be valid until it is cancelled or varied, notwithstanding that the tax payable in respect of any such goods is modified by amendment to this Act.

(4) Notwithstanding anything contained in sub-section (1) subject to such conditions as may be prescribed, a registered dealer, if he so elects, may pay tax on the sale of goods specified in Sl. No. 60 of the Third Schedule (or any other goods) on the maximum retail price indicate on the label of the container or pack thereof (or on such maximum retails price reduced by an amount equal to the tax payable).

(5) Notwithstanding anything contained in sub-section (1), a registered dealer shall be liable to pay tax on the sale of cigarettes, cigars, gutkha and other manufactured tobacco, on the maximum retail price indicated on the label of the container or pack thereof, after reducing from such maximum retail price an amount equal to the tax payable, where the total amount payable to the dealer as the consideration for sale of such goods exceeds five hundred rupees or any other higher amount as may be notified by the Commissioner.

(6) Where tax in respect of his purchase of goods is collected in accordance with sub-section (5).-

(a) a registered dealer whose sale of such goods is not liable to tax under sub-section (5), shall be eligible for refund or adjustment of any amount of tax collected on his purchase, which is in excess of the tax payable on his turnover relating to sale of such goods, and the burden of proving that the tax has been collected and paid in accordance with the said sub-section shall be on the dealer;

(b) a person who is not a dealer liable to get registered under the Act, may claim refund of any amount paid by the selling dealer in excess of the tax payable on the consideration paid by him to such conditions as may be prescribed.

Section 14. Special rebating scheme.-

Deduction of input tax shall be allowed on purchase of goods, specified in clauses (5) and (6) of sub-section (a) of Section 11, to the extent of the input tax charged at a rate higher than four per cent or any lower rate as may be notified by the Government.

Section 15. Composition of tax.-

(1) Subject to such conditions and in such circumstances as may be prescribed, any dealer other than a dealer who purchases or obtains goods from outside the State or from outside the territory of India, liable to pay tax as specified in Section 4 and.-

(a) whose total turnover (in a year) does not exceed an amount as may be notified by the

State Government which shall not exceed fifty lakh rupees, and who is not a dealer falling under clause (b) or (c) or (d) below;

(b) who is a dealer executing works contracts; or

(c) who is a hotelier, restaurateur, caterer (or dealer running a sweetmeat stall or in ice cream parlour) (or bakery or any other class of dealers as may be notified by the Government]; or

(d) who is a mechanized crushing unit producing (granite or any other metals)

may elect to pay in lieu of the net amount of tax payable by him under this Act by way of composition, an amount at such rate not exceeding five per cent on his total turnover or on the total consideration for the works contracts executed or not exceeding two lakh rupees for each crushing machine (per annum as may be notified by the Government).

(2) *Notwithstanding anything contained in sub-section (1), a dealer whose nature of business is of a type falling under more than one clause of sub-section (1), shall be eligible to opt for composition under the said sub-section in respect of tax payable on his turnover relating to any or all of such types of business subject to the condition that.-*

(a) such dealer maintains separate account of each type of his business;

(b) *the total turnover in a year in respect of all types of business of such dealer falling under clause (a) of sub-section (1) does not exceed the amount as may be notified under the said clause;*

(c) *the amount payable by way of composition by such dealer on his total turnover or the total consideration in respect of each type of such business shall be as may be notified for such type under sub-section (1);*

(d) *the total turnover of such dealer from all his types of business shall be reduced to the extent of the total turnover or total consideration in respect of each such type, for calculating the amount payable by way of composition for such type of business under sub-section (1); and*

(e) *in respect of such type of business for which, he has not exercised his option or is not eligible, for composition under sub-section (1), then on the taxable turnover as determined from the balance total turnover after reduction as specified in clause (d), he shall be liable to tax as specified under Section 4.*

(3) *Any dealer eligible for composition of tax under sub-section (1) many report, to the prescribed authority, the exercise of his option and he shall pay such amount due and furnish a return in such manner as may be prescribed.*

(4) *Any dealer opting for composition of tax (under this section) shall not be permitted to claim any input tax on any purchases made by him.*

(5) *Notwithstanding anything contained in (sub-section(1)).-*

(a) a dealer executing works contracts and who purchases or obtains goods from outside the State or from outside the territory of India shall be eligible to opt for composition under sub-section (1), and if the property in such goods (whether as goods or in some other form) is transferred in any works contract executed by him, the dealer shall be liable to pay tax on the value of such value shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under sub-section (1) by way of composition in lieu of the tax payable under the Act;

(b) *in the case of a dealer executing works contracts and opting for composition of tax under sub-section (1), no tax by way of composition shall be payable on the (amounts payable or paid) to a sub-contractor as consideration for execution of works contract whether wholly or partly and such amounts shall be deducted from the total consideration of the works contracts executed on which an amount as notified is payable under sub-section (1) by way of composition in lieu of*

the tax payable under the Act subject to production of proof that such sub-contractor is a registered dealer liable to tax under the Act and that such amounts are included in the return filed by such sub-contractor;

(c) *in the case of a dealer executing works contracts, after opting for composition of tax under sub-section (1), (who) effects sale of any goods liable to tax under the Act other than by transfer of the property in such goods (whether as goods or in some other form) in any works contract executed by him, the dealer shall be liable to pay tax on the value of such goods made by him;*

(d) *in the case of dealer opting for composition of tax under clause (a) or (c) of sub-section (1), the turnover on which tax is leviable under sub-section (2) of Section 3 shall be deducted from the total turnover on which an amount as notified is payable under sub-section (1) by way of composition in lieu of the tax payable under (the Act;)*

(e) *a dealer executing works contracts and opting for composition of tax under sub-section (1), shall be liable to pay tax, if any, under sub-section (2) of Section 3, in addition to tax by way of composition on the total consideration for the works contracts executed)..*

"Section 35. Returns.-

(1) Subject to sub-sections (2) to (4), every registered dealer, and the Central Government, a State Government, a statutory body and a local authority liable to pay tax collected under sub-section (2) of Section 9, shall furnish a return in such form and manner, including electronic methods, and shall pay the tax due on such return within twenty days after the end of the preceding month or any other tax period as may be prescribed.

Provided that the specified class of dealers as may be notified by the Commissioner shall furnish particulars for preparation of the return in the prescribed form or submit the return in the prescribed form, electronically

through internet in the manner specified in the said notification:

Provided further that the specified class of dealers as may be notified by the Commissioner shall pay tax payable on the basis of the return, by electronic remittance through internet in the manner specified in the said notification.

(2) The tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified in sub-section (1) without requiring issue of a notice for payment of such tax.

(3) Subject to such terms and conditions as may be specified, the prescribed authority may require any registered dealer.-

(a) to furnish a return for such periods, or

(b) to furnish separate branch returns where the registered dealer has more than one place of business.

(4) If any dealer having furnished a return under this Act, other than a return furnished under sub-section (3) of Section 38, discovers any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority,

[a] he shall furnish a revised return within the time prescribed for filing the return for the succeeding tax period; and

[b] he shall furnish a revised return any time thereafter but within six months from the end of the relevant tax period, if so permitted by the prescribed authority."

Section 38; Re-assessment of tax

(1) Where the prescribed authority has grounds to believe that any return furnished which is deemed as assessed or any assessment issued under Section 38 undertakes the correct tax liability of the dealer, it.

> *[a] on the basis of the return filed where he is satisfied that the return filed is correct and complete; or*
>
> *[b] to the best of its judgment, where the return filed appears to be incorrect or incomplete, after giving the dealer an opportunity of showing cause against such assessment in writing and any additional tax assessed shall be paid within thirty days from the date of service of such assessment on the dealer.*
>
> *2. xxxxx*
>
> Rule 37 of KVAT Rules:
>
> ***"Rule 37. Tax period. –*** *The tax period for the purpose of Section 35 shall be as follows, namely-*
>
> *(1) In the case of registered dealers, other than those dealers opting for payment of tax by way of composition under Section 15, whose total turnover in a year does not exceed twenty-five lakh rupees shall be a quarter.*
>
> *(2) In the case of other registered dealers, it shall be one calendar month.*
>
> ***Explanation.****- For the purposes of clause (1), a quarter shall mean any period ending on the final day of the months of March, June, September and December of calendar year."*

28. The aforesaid statutory provisions governing the field makes it very clear that a registered dealer is under an obligation to file its returns in the form and manner prescribed and to pay tax due on such returns within 20 days/15 days after the end of the preceding month or any other tax period as may be prescribed. The tax on any sale or purchase of goods declared in turnover furnished becomes payable at the expiry of the period of

20/15 days without requiring issue of a notice for payment of such tax. The registered dealer is entitled to file returns within six months from the end of the relevant tax period. It is the deemed assessment based upon the returns filed by every registered dealer under Section 35 of the KVAT Act except in certain cases where the Commissioner may notify.

29. The statutory provisions as contained under Section 10(3) of the KVAT Act amended from time to time and the relevant statutory provisions prior to amendment and after the amendment are quoted as under:

> "SECTION 10[3] OF THE KVAT ACT PRIOR TO AMENDMENT
>
> Act No.5 of 2008:
>
> *[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.*
>
> Section 10[3] of the Act after its amendment by Act No.5 of 2008 w.e.f., from 01.08.2008:
>
> *[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 this Act.

SECTION 10(3) OF THE KVAT ACT AFTER ITS SUBSTITUTION IN 2015 w.e.f. April 1, 2015:

10. Output tax, input tax and net tax
(1) and [2] .....

(3) Subject to input tax restrictions specified in Section 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 relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and shall be accounted for in accordance with the provisions of this Act.

SECTION 10(3) OF THE KVAT ACT AFTER ITS AMENDMENT IN 2016 w.e.f. 1-4-2016

10. Output tax, input tax and net tax.
(1) .....

(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 this Act.

Provided that, a registered Dealer while calculating the net tax payable on or after first day of April, 2015, may claim input tax relatable to goods purchased during the period immediately preceding five tax periods
of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods."

Section 10[4] of the Act reads thus:

"[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 [x x x] and is with 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."*

30. The appellant company placing reliance upon Form VAT 240 was claiming input tax credit, whereas there is a period prescribed for claiming such input tax credit. Merely because the appellant company was under an obligation as it was having turnover of more than Rs.100 lakhs to submit audited statement of accounts (Form VAT 240), it cannot get a new lease of life to claim input tax credit.

31. The learned Single Judge has placed reliance upon the judgment delivered in the case of *Kirloskar Electricity Co.Ltd., vs. State of Karnataka and Another,* reported in (2018)50 GSTR 385 (Karnataka) and has rightly arrived at a conclusion that a registered dealer is not entitled to claim input tax credit on the premise that the registered dealer has not claimed such input tax credit in that particular period. The statutory provisions under the KVAT Act are very clear and no statutory provision entitles a dealer to claim input tax credit based upon Form VAT 240.

32. Learned counsel for the appellant has drawn the attention of this Court towards the judgment delivered in the case

of *Eicher Motors Ltd., vs. Union of India,* reported in 1999(106) ELT 3 (SC). The aforesaid case was a case relating to the Central Excise Act, 1944. This Court has carefully gone through the aforesaid case and it is certainly distinguishable on facts as under the KVAT Act there is a period prescribed for claiming input tax credit and the appellant wants to claim input tax credit dehors the statutory provisions, that too, after the limitation is over based upon Form VAT 240, which is certainly not a return.

33. Reliance has also been placed upon a judgment delivered in the case of the *Collector of Central Excise, Pune vs. Dai Ichi Karkaria Ltd.,* reported in 1999 (112) ELT 353 (SC). Again, it is a case under the Central Excise Act, 1944 r/w Central Excise Rules, 1944. In the aforesaid case also, it has been laid down that under the Modvat Rules a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. Then, he/it is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. However, in the present case, the dealer has certainly missed the bus by not reflecting the input tax credit in the returns filed by him and now wants advantage of input tax credit only because he

has reflected the same in the audited statement of accounts in Form VAT 240 and therefore, this judgment is again of no help to the appellant.

34. Learned counsel for the appellant has also placed reliance upon the judgment in the case of *State of Karnataka vs. K.Bond Polymers Ltd.,* reported in MANU/KA/2537/2012 (2012-VIL-127-KAR – STRP No.92/2009, decided on 2.3.2012). It is true that in the aforesaid case the Division Bench has held that the assessee is entitled to claim refund of input tax credit and there was a delay of six months and in those circumstances, it was held that the delay in putting forth the claim for refund does not in any way affect his right to claim the said amount, for which the assessee was legally entitled to. However, the aforesaid judgment is distinguishable on facts as in the present case the assessee has not at all made any claim of input tax rebate in the returns filed by him. He wants the input tax rebate based upon the audited statement in Form VAT 240, which is certainly not a returns.

35. Learned counsel for the appellant has also placed reliance upon the judgment in the case of *M/s Kirloskar Ferrous Industry Ltd., vs. Assistant Commissioner of Commercial Taxes,*

Koppal and Others, reported in 2013-VIL-70-KAR (WA.No.30124/2013(T-RES), decided on 17.7.2013). In the aforesaid case, the assessee was claiming input tax rebate based upon From VAT 240. The order of Commissioner of Commercial Taxes was under challenge. The learned Single Judge has dismissed the writ petition based upon the fact of an alternate remedy being available. The Division Bench has remanded the matter back to the assessing authority to decide the matter in accordance with law and therefore, this judgment again does not help the appellant.

36. Therefore, in the considered opinion of this Court, by no stretch of imagination it can be said that merely because the dealer has submitted audited statement of accounts in Form VAT 240 he is entitled for input tax credit. It is pertinent to note that Form VAT 240 is only the audited statement of accounts issued by the Chartered Accountant/Cost Accountant/Tax Practitioner and it can never be construed as returns to compute the net tax liability under Section 10(3) as rightly held by the learned singe Judge. The substantive provision of the KVAT Act i.e., Section 10(3) has to be read harmoniously with the procedural provision of filing of the returns under Section 35 of the KVAT Act. The learned Single Judge was therefore justified in holding that filing of returns

within the time prescribed under Section 35 of the KVAT Act is mandatory and based upon the returns filed by a dealer the tax liability is determined after deducting the input tax from output tax. Form VAT 240 can never be treated to be returns in any manner. In the considered opinion of this Court, the learned Single Judge was justified in dismissing the writ petitions as the appellant was claiming input tax credit based upon Form VAT 240 and by no stretch of imagination Form VAT 240 can be treated as a returns for the purposes of claiming input tax credit, especially in the light of the fact that filing of returns to compute the net tax liability has to take place keeping in view Section 10(3) and 10(4) of the KVAT Act.

37. The learned Single Judge was also justified in holding that in case such a petition is allowed there will be two classes of dealers under the same VAT Act, 2003 i.e., dealers who are not required to file Form VAT 240 and dealers who are required to file Form VAT 240 i.e., who are having turnover of more than Rs.100 lakhs and it will certainly amount to discrimination between dealers which form one class under the KVAT Act, 2003. This Court does not find reason to interfere with the order passed by the Commissioner of Commercial Taxes and the learned Single Judge.

38. Resultantly, no case for interference is made out in the matter. The writ appeal is dismissed. The other connected appeals are also dismissed.

Pending IAs, if any, also stand disposed of.

No orders as to costs.

Sd/-
JUDGE

Sd/-
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