2023 INSC 974

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 5822-5823 OF 2023

M/S MODI NATURALS LTD …… APPELLANT

VERSUS

THE COMMISSIONER OF COMMERCIAL TAX UP …… RESPONDENT

J U D G M E N T

J. B. PARDIWALA, J.

1. Since the issues raised in both the captioned appeals are the same, the parties are also the same and the challenge is also to the self-same judgment passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the appellant shall hereinafter be referred to as the assessee and the respondent shall hereinafter be referred to as the revenue.

3. These appeals are at the instance of an assessee, duly registered under Section 17 of the Uttar Pradesh Value Added Tax Act, 2008 (for short, '**the UP VAT Act'**) and are directed against the common judgment and order dated

03.05.2019 passed by the High Court of Judicature at Allahabad in the Commercial Tax Revisions Nos. 315 of 2017 and 148 of 2018 respectively, by which the High Court allowed both the Commercial Tax Revisions filed by the revenue against the Orders dated 04.05.2016 and 05.07.2017 respectively passed by the Commercial Tax Tribunal, Bareilly Bench, Bareilly and thereby took the view that the assessee is not entitled to the full benefit of Input Tax Credit (for short, '**ITC**') claimed on the goods purchased by it for manufacturing its final product.

FACTUAL MATRIX

4. The assessee is a company engaged in the business of manufacture and sale of Rice Bran Oil (for short, '**RBO**') and Physical Refined RBO. The assessee as stated above is a registered dealer under the UP VAT Act and the RBO manufactured by the assessee falls within the ambit of "taxable goods" under the UP VAT Act. For the purpose of manufacturing RBO, the assessee procures Rice Bran (for short, '**inputs**'/'**purchased goods**') and follows the Solvent Extraction Process. During the manufacturing process of RBO a by-product in the form of "De-Oiled Rice Bran" (for short, '**DORB**') is also produced. DORB falls within the category of exempted goods under S. No. 4 of Schedule – I of the UP VAT Act.

5. The dispute between the parties relates to the assessment years 2013-14 and 2015-16 respectively.

6. The assessee by processing Rice Bran in its solvent extraction plant produced 13.77% taxable goods i.e., RBO and 83.63% by-product i.e., DORB. As stated, aforesaid by further refining the RBO, the physical refined RBO is also produced. The record reveals that for the Assessment Year 2013-14, the assessee purchased 8,21,935.71 quintals of Rice Bran for a sum of Rs. 93,69,53,404.00 and paid tax of Rs. 4,68,47,670.00. By processing the inputs, 1,13,180.54 quintals of RBO was produced and 6,87,138.25 quintals of DORB was produced. Out of 1,13,180.54 quintals of RBO, 93,241.15 quintals of RBO was further refined to produce 76,068.37 quintals of physical refined RBO. The said quantity of physical refined RBO and the balance quantity of RBO (19,939.40 quintals) was sold within the State of Uttar Pradesh for Rs. 45,91,66,611 and Rs. 9,60,11,540 respectively aggregating to a total of Rs. 55,51,78,151/-. The assessee's tax liability on the said sales was calculated at Rs. 2,77,58,908/-.

7. On the basis of the statutory provisions of Section 13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) to Section 13 of the UP VAT Act, the assessee claimed full amount of tax paid as ITC i.e., a sum of Rs. 4,68,47,670/-. The claim of the assessee came to be rejected *vide* the Order of the Deputy Commissioner, Tax Fixation, Div. – I, Pilibhit passed in terms of Section 28(2)(i) of the UP VAT Act. It is the case of the revenue that had the assessee been permitted to avail

the full ITC, it would have led to a loss of Rs. 1,90,88,763.00 to the State exchequer.

8. In connection with both the Assessment Years i.e. 2013-14 and 2015-16, respectively *vide* two separate orders, the Deputy Commissioner took the view that in terms of Section 13(1)(f), the assessee could have availed the ITC on the inputs only *vis-à-vis* the taxable sales, as the sale price of the final goods was lesser than the manufacturing cost of the purchased goods. In other words, according to the Deputy Commissioner the term "goods" in Section 13(1)(f) of the UP VAT Act means only the taxable goods. The matter ultimately reached before the Additional Commissioner Grade II, (Appeals), 2nd Commercial Tax, Bareilly. The Incharge Additional Commissioner for the Assessment Year 2015-16 took the view that the assessee was entitled to claim full ITC and accordingly allowed the appeal of the assessee. The Incharge Additional Commissioner accepted the case put up by the assessee that the word "goods" in Section 13(1)(f) of the UP VAT Act cannot be restricted to only "taxable goods". However, for the Assessment Year 2013-14, the Additional Commissioner proceeded to remand the matter to the Tax Fixation officer for passing the re-tax fixation order.

9. The revenue being dissatisfied with the view taken by the Additional Commissioner went in appeal before the Commercial Tax Tribunal, Bareilly Bench, Bareilly in so far as the Assessment Year 2015-16 is concerned. We

may clarify that so far as the Assessment Year 2013-14 is concerned, it was the assessee who had to go before the Commercial Tax Tribunal by way of a second appeal as the Additional Commissioner had allowed the appeal filed by the assessee and had remanded the matter to the Tax Fixation Officer.

10. Although the Commercial Tax Tribunal passed two separate orders with respect to the two assessment years referred to above, yet the issues between the parties remained common. Ultimately, it is the revenue who went before the High Court with two Commercial Tax Revision Applications being the Revision No. 148 of 2018 and Revision No. 315 of 2017 respectively. Both the revision applications were heard analogously by the High Court.

11. The High Court formulated the following substantial question of law for its consideration: *"Whether under the facts and circumstances of the case, the Commercial Tax Tribunal was legally justified in granting the benefit of ITC of Rs. 1,90,88,763.00 which was reversed by the Assessing Authority?"*

12. The High Court relying on the decision of this Court in the case of ***State of Karnataka v. M.K. Agro Tech Private Limited***, reported in **(2017) 16 SCC 210** took the view that a dealer has no vested right to seek the benefit of ITC as the same is just a concession by virtue of the provisions of the Act. The High Court held that the provisions of Section 13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) of the UP VAT Act are not applicable as asserted by the assesee and the case

of the assessee stood covered by Section 13(1)(f) of the UP VAT Act. The High Court relying on Section 13(1)(f) of the UP VAT Act took the view that the assessee is not entitled to claim full ITC on the inputs. The High Court accordingly allowed both the revision applications filed by the revenue.

13. In such circumstances referred to above, the asseesee is here before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE ASSESSEE

14. Mr. Arvind Datar, the learned Senior Counsel appearing for the assessee vehemently submitted that the High Court committed a serious error in passing the impugned judgment. According to Mr. Datar the impugned judgment of the High Court is incorrect as it has failed to take notice of the fact that the case of the assessee herein is squarely covered by the provisions of Section 13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) of the UP VAT Act. It was argued that the High Court erroneously held that Section 13(1)(f) of the UP VAT Act is applicable to the case on hand.

15. Mr. Datar further argued that the entire edifice of the impugned judgment of the High Court is based on incorrect application of the decision of this Court in case of ***M.K. Agro Tech*** (**supra**). He would argue that the statutory provisions under the Karnataka Value Added Tax Act, 2003 and UP VAT Act are distinct and different in all respects. He pointed out that the UP

VAT Act specifically carves out an exception for the by-products and waste products respectively. Even if those are exempt goods or non-VAT Goods, the ITC is permissible.

16. Mr. Datar further argued that the definition of the word "goods" under Section 2(m) of the UP VAT Act does not differentiate between the exempted and taxable goods and equally the word "goods" under Section 13(1)(f) of the UP VAT Act cannot be said to be qualified by the word "taxable". He pointed out that, if the legislative intent was to qualify "goods" with the word "taxable", it could have been said so by the Legislature in Section 13 of the UP VAT Act itself. It was argued that if the legislative intent in the 2010 amendment was to limit the scope and ambit of the word "goods" under Section 13(1)(f) of the UP VAT Act solely to "taxable goods", there was nothing that prevented the concerned legislature from expressly utilising the phrase "taxable goods" in Section 13(1)(f) of the UP VAT Act.

17. In the last, Mr. Datar argued that in construing taxation statutes, the court should apply the strict rule of interpretation. When the competent legislature mandates taxing certain business/certain objects in certain circumstances, it cannot be expounded/interpreted to those which were not intended by the legislature.

18. In such circumstances referred to above, Mr. Datar the learned Senior Counsel prayed that there being merit in his appeals those may be allowed and

the impugned judgment passed by the High Court be set aside and that of the Tribunal be affirmed.

SUBMISSIONS ON BEHALF OF THE REVENUE

19. Mr. R.K. Raizada, the learned Additional Advocate General appearing for the State of UP on the other hand vehemently opposed both the appeals submitting that no error, not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment.

20. The principal contention canvassed on behalf of the revenue is that the use of the expression "except as by-product or waste product" in Section 13(3)(b) of the UP VAT Act is decisive and if the exempt goods or non-VAT goods are being produced as the main products only and not being produced as the "by-product or waste product" then in such circumstances, Section 13(3)(b) of the UP VAT Act would have no application. According to the learned counsel, Section 13(3)(b) would be applicable only to a situation wherein the manufacturing of the "VAT goods", "exempt goods" and "non-VAT goods" are not being produced as the "by-product" or "waste product".

21. It was argued that in the case on hand, the cumulative sale price of the RBO and DORB respectively is more than the cost price and in such circumstances, Section 13(3)(b) read with Explanation (iii) of the UP VAT Act would have no applicability. It was also argued that Section 13(1)(f) of the UP VAT Act starts with a *non-obstante* clause having an overriding effect on the

provision of Section 13(1)(a) of the UP VAT Act. The words and expressions used in Section 13(1)(f) of the UP VAT Act require a textual interpretation matching with the contextual interpretation that Section 13(1)(f) of the UP VAT Act seeks to remedy the mischief, caused by the words used in the Table of Section 13(1)(a) of the UP VAT Act. Section 13(1)(f) UP VAT Act restricts the amount of ITC figuring in Table of Section 13(1)(a) UP VAT Act to the extent of tax payable on the sale value of goods or manufactured goods, in specific cases, i.e., costing of the manufactured taxable goods except the non-VAT goods being lower than the costing of the taxable inputs.

22. It was also argued that the High Court rightly placed reliance on the decision of this Court in the case of ***M. K. Agro Tech*** (supra).

23. In such circumstances referred to above, Mr. R.K. Raizada submitted that there being no merit in both the appeals those may be dismissed.

ANALYSIS

24. Having heard the learned counsel appearing for the parties and having gone through the materials on record the following questions fall for our consideration:

a. Whether the assessee is entitled to claim full amount of tax paid towards the purchase of raw Rice Bran as ITC on the basis of the provisions of Section

13(1)(a) read with S. No. 2(ii) of the Table appended thereto and Section 13(3)(b) read with Explanation (iii) of Section 13 of the UP VAT Act?

b. Whether the scope of the word "goods" as defined under Section 2(m) of the UP VAT Act as outlined in Section 13(1)(f) of the UP VAT Act should be limited to only "taxable goods"?

c. Whether the decision of this Court in the case of ***M.K. Agro Tech*** (supra) has any application to the case on hand?

RELEVANT PROVISIONS OF THE UP VAT ACT, 2008

25. Before we advert to the rival submissions canvassed on either side, we must look into few relevant provisions of the UP VAT Act:

> *"**2. Definitions***
>
> *xxx xxx xxx*
>
> *(m) "goods" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares or securities;*
>
> *Xxx xxx xxx*
>
> *(p) "input tax" in relation to a registered dealer who has purchased any goods from within the State, means the aggregate of the amounts of tax, -*
>
> *(i) paid or payable by such registered dealer to the registered selling dealer of such goods in respect of purchase of such goods; and*

(ii) paid directly to the State Government by the purchasing dealer himself in respect of purchase of such goods where such purchasing dealer is liable to pay tax under this Act on the turnover of purchase of such goods

Provided that tax paid or payable in respect of transfer of right to use any goods shall not form part of the input tax

Xxx xxx xxx

(u) "manufacturer" in relation to any goods mentioned or described in column (2) of Schedule IV of this Act, means a dealer who, by application of any process of manufacture, after manufacture of a new commercial commodity inside the State, makes first sale of such new commercial commodity within the State, whether directly or otherwise; and includes a selling agent who makes sale of such new commodity on behalf of the person who has manufactured it;

(v) "non-vat goods" means any of the goods mentioned or described in column (2) of Schedule-IV;

Xxx xxx xxx

(z) "registered dealer" means a dealer registered under Section 17 or Section 18;

Xxx xxx xxx

(ah) "taxable dealer" means a dealer who is liable to pay tax under this Act;

(ai) "taxable goods" means any goods except goods mentioned or described in column (2) of Schedule I;

Xxx xxx xxx

"13. Input tax credit

(1) Subject to provisions of this Act, dealers referred to in the following clauses and holding valid registration certificate under this Act, shall, in respect of taxable goods purchased from within the State and mentioned in such clauses, subject to conditions given therein and such other conditions and restrictions as may be prescribed, be allowed credit of an amount, as input tax credit, to the extent provided by or under the relevant clause:

(a) Subject to conditions given in column (2), every dealer liable to pay tax, shall, in respect of all taxable goods except non-vat goods, capital goods and captive power plant, where such taxable goods are purchased on or after the date of commencement of this Act, be allowed credit of the amount, as input tax credit, to the extent provided in column 3 of the table below:

TABLE

Serial No.	***Conditions***	***Extent of amount of input tax credit***
(1)	***(2)***	***(3)***
1.	*If purchased goods are re-sold-* *(i) inside the State, or* *(ii) in the course of inter-state trade or commence; or* *(iii) in the course of the export of the goods out of the territory of India.*	*Full amount of input tax*
2.	*If purchased goods are used in manufacture of -* *(i) any goods except non-vat goods and where such manufactured goods are sold in the course of the export of the goods out of the territory of India; or* *(ii) any taxable goods except non-vat goods and where such manufactured goods are sold either inside the State or in the*	*Full amount of input tax*

	course of inter-State trade or commerce	
3.	*If purchased goods are –* *(i) transferred or consigned outside the State otherwise than as a result of a sale; or* *(ii) used in manufacture of any taxable goods except non-vat goods and such manufactured goods are transferred or consigned outside the State otherwise than as a result of a sale.*	*Partial amount of input tax, which is in excess of four percent of the purchase price on which the dealer has paid tax either to the registered selling dealer or to the State Government"*

Xxx xxx xxx

(f) Notwithstanding anything to the contrary contained in this sub-section where goods purchased are resold or goods manufactured or processed by using or utilizing such purchased goods are sold, at the price which is lower than

(i) purchase price of such goods in case of resale; or

(ii) cost price in case of manufacture,

the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods. (Clause (f) was inserted w.e.f. 20-08-2010 vide notif. no 1101(2) dt. 20-08-2010, U.P. Act No 19 of 2010)

xxx xxx xxx

(3) (a)Where purchased goods are to be used or disposed of partially for the purpose specified in clause (a) of sub-section (1) or otherwise, the input tax credit may be claimed and be allowed

proportionate to the extent they are used or disposed of for the purposes specified in such clause,

(b)Subject to the provisions of this section where during process of manufacture of vat goods, exempt goods and non vat goods except as by product or waste product are produced, the amount of input tax credit may be claimed and be allowed in proportion to the extent they are used or consumed in manufacture of taxable goods other than non vat goods and exempt goods Explanation:- For the purpose of this subsection the "exempt goods" shall include taxable goods other than non vat goods, which are disposed of otherwise than by way of sale within the State or in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India or sale out side the State."

xxx xxx xxx

***Explanation**:-For the purposes of this section, –*

(i) goods for use in manufacture of any goods includes goods required for use, consumption or utilization in manufacture or processing of such goods or goods required for use in packing of such manufactured or processed goods;

(ii) manufacture of any goods includes processing of such goods and packing of such manufactured or processed goods; and

(iii) where during the process of manufacture of any taxable goods any exempt goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of taxable goods. Conversely, where during the process of manufacture of any exempt goods any taxable goods are produced as by-product or waste product; it shall be deemed that purchased goods have been used in the manufacture of exempt goods.

(iv) where during the process of manufacture of any vat goods any non-vat goods are produced as by-product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of vat goods. Similarly, where during the process of manufacture of any non-vat goods any vat goods are produced as by-

product or waste-product, it shall be deemed that purchased goods have been used in the manufacture of non-vat goods. (w.e.f.01.01.2008)."

(Emphasis supplied)

26. As the entire debate revolves around the interpretation of Section 13 of the UP VAT Act, we must look into the Statement of objects and reasons for the enactment of Section 13(1)(f) by way of the 2010 Amendment Act. In the Statement of objects and reasons of the Uttar Pradesh Value Added Tax (Amendment) Bill, 2010 (for short, **"the 2010 Amendment"**), it has been stated that the amendment was to provide for –

"xxx

(d) limiting the input tax credit to the extent of tax payable on the sale value of goods or manufactured goods in cases where goods purchased are resold or goods manufactured or processed by using or utilizing such purchased goods are sold at a price lower than purchase price or cost price;"

(Emphasis supplied)

27. The plain reading of the aforesaid would indicate that the legislative intent was never to limit or circumscribe the scope of "goods" as outlined in Section 13(1)(f) to only "taxable goods". The amendment was effected with some definite purpose. The mischief that was sought to be addressed by virtue of introducing Section 13(1)(f) to the scheme of the UP VAT Act was one where the goods (including taxable, exempt goods, by-products or waste products) manufactured were being sold at a price lower than the cost price.

28. It is in such cases that the extent of permissible or allowable ITC would be limited to the tax payable on the sale value of the goods or manufactured goods. We are at one with Mr. Datar that this was the sole purpose of the 2010 Amendment.

29. We are also at one with Mr. Datar that the definition of "goods" under Section 2(m) of the UP VAT Act referred to above does not differentiate between exempt and taxable goods and equally, the word "goods" under Section 13(1)(f) of the UP VAT Act has also not been qualified by the word "taxable".

30. Mr. Datar is right in his submission that the necessary corollary to the reading of the provision ought to be that the goods which are manufactured/produced by using or utilizing the purchased goods and whose sale price is being considered for applying Section 13(1)(f) of the UP VAT Act, ought to be taxable goods.

31. The aforesaid is further manifested from the fact that wherever the legislative intent was to qualify "goods" with the word "taxable", it has been so done by the Legislature in Section 13 of the UP VAT Act itself.

32. Had the legislative intent of the 2010 Amendment been to limit the scope and ambit of "goods" under Section 13(1)(f) solely to "taxable goods", there was nothing that could have prevented the Legislature from expressly using the phrase "taxable goods" in Section 13(1)(f) of the UP VAT Act.

33. Mr. Datar is right in his submission that the said omission in Section 13(1)(f) is all the more glaring considering that the said amendment was inserted in the year 2010.

34. In the aforesaid context, our attention was also drawn by Mr. Datar to the provisions of Rule 23(6) of the Uttar Pradesh Value Added Tax Rules, 2006 (for short, **"the UP VAT Rules"**) (which provides for the computation of reverse ITC in cases of a dealer other than a trader), wherein the word "goods" has not been qualified by "taxable" and rather has used the word "any" to expressly convey the unequivocal legislative mandate. Rule 23(6) of the UP VAT Rules is reproduced hereunder:

> "*23. Computation of reverse input tax credit in cases of a dealer other than trader:*
>
> *(1) In case of a dealer, other than a dealer referred to in sub-rule (1) of rule 22, amount of reverse input tax credit, in respect of any quantity or measure of any goods-*
>
> *xxx* *xxx* *xxx*
>
> *(6) In respect of any quantity or measure of any goods manufactured or processed by using or utilizing purchased goods, sold at the price which is lower than cost price, the amount of reverse input tax credit shall be equal to the differential amount of tax paid or payable on the purchase price of such goods and tax paid or payable on sale price of manufactured or processed goods sold*."

35. We take notice of the fact that "taxable goods" has been separately defined under Section 2(ai) of the UP VAT Act. The definition reads thus:

> *"(ai) "taxable goods" means any goods except goods mentioned or described in column (2) of Schedule I;"*

GENERAL PRINCIPLES FOR INTERPRETATION OF TAXING STATUTES

36. It is well accepted that a statute must be construed in accordance with the intention of the Legislature and the courts should act upon the true intention of the Legislation while applying law and while interpreting law. In the litigation on hand, we have been asked to interpret the provisions of a taxing statute.

37. Justice G.P. Singh, in his treatise *Principles of Statutory Interpretation* (14th Edn. 2016 p. 879) after referring to *Micklethwait, In re;*[1] ***Partington v. Attorney General***[2], ***Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation Ltd. v. CIT***[3], ***State Bank of Travancore v. CIT***[4] *and* ***Cape Brandy Syndicate v. IRC***[5], summed up the law in the following manner:

> *"A taxing statute is to be strictly construed. The well-established rule in the familiar words of Lord Wensleydale, reaffirmed by Lord Halsbury*[6] *and Lord Simonds*[7]*, means:*

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[1] (1855) LR 11 Ex 452 : 156 ER 908
[2] (1869) LR 4 HL 100
[3] (2014) 11 SCC 672
[4] (1986) 2 SCC 11 : 1986 SCC (Tax) 289
[5] (1921) 1 KB 64
[6] *Ed: Tennant v. Smith, 1892 AC 150 at p. 154*
[7] Ed. : St Aubyn v. Attorney General, 1952 AC 15 at p. 32 (HL)

"The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.""

38. In a classic passage Lord Cairns stated the principle thus:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute."

39. Viscount Simon quoted[8] with approval a passage[9] from Rowlatt, J. expressing the principle in the following words: (**Cape Brandy case**[10], KB p. 71)

'... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.'"

40. It was further observed:

"In all tax matters one has to interpret the taxation statute strictly. Simply because one class of legal entities is given a benefit which is specifically stated in the Act, does not mean that the benefit can be extended to legal entities not referred to in the Act as there is no equity in matters of taxation...."

[8] Ed. : Canadian Eagle Oil Co. Ltd. v. Selection Trust Ltd., 1946 AC 119 at p. 140 (HL)
[9] Cape Brandy Syndicate v. IRC, (1921) 1 KB 64
[10] Ibid.

41. Yet again, it was observed:

> *"It may thus be taken as a maxim of tax law, which although not to be overstressed ought not to be forgotten that,*
>
> > *'the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax [on] him', (Russell v. Scott [11], AC p. 433).*
>
> *The proper course in construing revenue Acts is to give a fair and reasonable construction to their language without leaning to one side or the other but keeping in mind that no tax can be imposed without words clearly showing an intention to lay the burden and that equitable construction of the words is not permissible [Ormond Investment Co. v. Betts [12]]. Considerations of hardship, injustice or anomalies do not play any useful role in construing taxing statutes unless there be some real ambiguity [Mapp v. Oram [13]]. It has also been said that if taxing provision is*
>
> > *'so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect [IRC v. Ross and Coulter [IRC v. Ross and Coulter[14]]'."*

42. Further elaborating on this aspect, the learned author stated as follows:

> *"Therefore, if the words used are ambiguous and reasonable open to two interpretations benefit of interpretation is given to the subject [Central India Spg. and Wvg. & Mfg. Co. Ltd. v. Municipal Committee, Wardha [15]]. If the legislature fails to express itself clearly and the taxpayer escapes by not being brought within the letter of the law, no question of unjustness as such arises [CIT v. Jalgaon Electric Supply Co. Ltd.[16]]. But equitable considerations are not relevant in construing a taxing statute, [CIT v. Central India Industries Ltd.[17]], and similarly logic or reason cannot be of much avail in interpreting a taxing statute [Azam Jah Bahadur v. Expenditure Tax Officer[18]]. It is well settled that in the field of taxation, hardship or equity has*

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[11] 1948 AC 422 : (1948) 2 All ER 1 (HL)
[12] *1928 AC 143 (HL)*
[13] *1970 AC 362 : (1969) 3 WLR 557 : (1969) 3 All ER 215 (HL)*
[14] *(1948) 1 All ER 616 (HL)*
[15] *AIR 1958 SC 341*
[16] AIR 1960 SC 1182
[17] (1972) 3 SCC 311 : AIR 1972 SC 397
[18] (1971) 3 SCC 621 : AIR 1972 SC 2319

no role to play in determining eligibility to tax and it is for the legislature to determine the same [Kapil Mohan v. CIT[19]]. Similarly, hardship or equity is not relevant in interpreting provisions imposing stamp duty, which is a tax, and the court should not concern itself with the intention of the legislature when the language expressing such intention is plain and unambiguous [State of M.P. v. Rakesh Kohli[20]]. But just as reliance upon equity does not avail an assessee, so it does not avail the Revenue."

43. The passages extracted above, were quoted with approval by this Court in at least two decisions being ***CIT v. Kasturi and Sons Ltd***.[21] *and* ***State of W.B. v. Kesoram Industries Ltd***.[22] (hereinafter referred to as **"Kesoram Industries case"**, for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

> *"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (iii) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."*

[19] (1999) 1 SCC 430 : AIR 1999 SC 573
[20] (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481
[21] (1999) 3 SCC 346
[22] (2004) 10 SCC 201

44. Applying the aforesaid principles of interpretation, we find it difficult to accept the case put up by the revenue as doing so would permit the assessing authority to do something indirectly what he cannot do directly i.e., get around the mandate of the exception carved out by Section 13(3)(b) read with Explanation (iii) by invoking Section 13(1)(f) of the UP VAT Act.

45. It is also pertinent to note that indisputably, the DORB which is produced as part of the Solvent Extraction process is a by-product of the manufacturing process. Our attention was drawn by Mr. Datar to a letter dated 13.01.2015 addressed by the Additional Commissioner (Legal) Commercial Tax, UP to all Zonal Additional Commissioner Grade-I, Commercial, Tax Uttar Pradesh (Annexure P-1) which reads thus:

> *"Letter No. Legal-2(1) Rice export (2014-15)/1458/ Commercial Tax*
>
> *Sender:*
>
> *The Commissioner*
> *Commercial Tax*
> *Uttar Pradesh*
>
> *To*
>
> *All Zonal Addl. Commissioner Grade-1*
> *Commercial Tax*
> *Uttar Pradesh*
>
> ***Lucknow dated 13 Jan. 2015***
>
> *Sir,*
>
> *After examining the records of traders/ manufacturer of the rice bran oil, the Joint Commissioner (SIB) Commercial Tax Gonda*

vide his DO letter No. 47/ Jt. Comm. (SIB) Commercial Tax Gonda dated 16.7.2011 has submitted a detailed report. Copy of which is attached. In this context the Addi. Commissioner Grade-1 Commercial Tax Faizabad Zone, Faizabad has given the following report:

The Joint Commissioner (SIB) Commercial Tax Gonda in the perspective of provisions of section 13(3) (B) read with section 13(1)(f) of the VAT Act has expressed this presumption that if the sale of any taxable goals is effected at the low price than the purchase cost of the raw material then the trader shall get the benefit of ITC only up to the extent of sale value of manufactured goods. The trader produce the rice bran oil by purchasing the rice bran in which de-oiled rice bran is received as a byproduct/waste product. In this way such produced is sold at much lower price in the perspective of cost of production whereas ITC is being claimed on the entire amount of utilized rice bran which is in contra to Section 13(1)(f). In this manner the trader shall get the benefit of ITC on the utilized rice bran up to the limit of sale of produced rice bran.

Hence in relation to above please examine the records manufacturing units of your zone involved in the extraction of rice bran and oil cake. The details of action taken in this regard be please made available within a period of one week.

Encl: as above

Yours faithfully,

Sd/- Sadhna Tripathi
Addl. Commissioner
(Legal) Comm. Tax HQ,
UP"
(Emphasis supplied)

46. It is to be noted that the DORB falls within exempted goods under S. No. 4 of Schedule I of the UP VAT Act. The relevant Entry is reproduced below for ease of reference:

"SCHEDULE I

[See clause (b) of Section 7 of Uttar Pradesh Value Added Tax Act, 2008]

LIST OF EXMEPTED GOODS

SI. NO.	*Name and description of goods*
(1)	*(2)*
I [1.]	*xxx xxx xxx*
xxx	*xxx xxx xxx*
4.	*Aquatic feed; poultry feed including balanced poultry feed; cattle feed including balanced cattle feed; and cattle fodder including green fodder, chuni, bhusi, chhilka, choker, javi, gower, de-oiled rice polish,* ***de-oiled rice bran,*** *de-oiled rice husk, de-oiled paddy husk or outer covering of paddy; aquatic, poultry and cattle feed supplement, concentrate and additives thereof; wheat bran and de-oiled cake but excluding oil cake; rice polish; rice bran and rice husk; sanai and dhaincha"*

47. A bare perusal of the scheme under Section 13 of the UP VAT Act [and specifically under Section 13(1)(a)] makes it abundantly clear that in cases where the purchased goods (in the present case Rice Bran) are used in the manufacture of taxable goods (in the present case RBO and physically refined RBO) except the non-VAT goods, and where such manufactured goods are sold within the State or in the course of inter-state trade and commerce, the registered dealers (like the assessee herein) are entitled to claim input tax credit of the full amount. The charging section of the UP VAT Act, therefore, entitles the assessee to claim full amount of tax paid on the purchases as ITC.

48. Furthermore, Section 13(3)(b) of the UP VAT Act, introduces the concept of proportionality in the scheme of the enactment and by means of a deeming fiction provides that where during the manufacture of VAT goods, exempt and non-VAT goods (except as by-product or waste product) are produced, the amount of ITC credit may be claimed and may be allowed in proportion to the extent they are used or consumed in manufacture of taxable goods other than the non-VAT goods and exempt goods.

49. Section 13(3)(b), however, leaves a grey area with respect to cases where the process of manufacture (such as in the present case) results in the production of VAT goods and by-products or waste products. In such cases, the legislature has done well to take care of the grey area by providing for another legal fiction in the form of Explanation (iii) to Section 13 wherein it is provided that during the manufacture of any taxable goods, any exempt goods are produced as by-product or waste product, it shall be deemed that the purchased goods have been used in the manufacture of taxable goods.

50. Explanation (iii) to Section 13, therefore, forbids the Assessing Authority as well as the assessee from raising any dispute in regard to the allowability of the ITC in cases where exempted goods are being produced as a by-product or waste product during the process of manufacture.

WHETHER THE HIGH COURT WAS RIGHT IN PLACING RELIANCE ON THE DECISION OF THIS COURT IN THE CASE OF M.K. AGRO TECH PRIVATE LIMITED (SUPRA)

51. The revenue has relied upon the decision of this Court in ***M.K. Agro Tech*** (supra), as the basis for denying ITC to the assessee.

52. The decision in the case of ***M.K. Agro Tech*** (supra), was rendered by this Court, examining the claim of ITC by an assessee on the goods purchased under the Karnataka Value Added Tax Act, 2003 (for short **"Karnataka VAT Act"**).

53. In the case of ***M.K. Agro Tech*** (supra), the assessee was engaged in the manufacture of sunflower oil (taxable goods), which is extracted from sunflower cake, by employing solvent extraction process. Sunflower oil cake is the input/raw material on which VAT was payable. During the extraction process, a 'by-product' in the form of de-oiled sunflower oil is produced. The said by-product was also exempted under the Karnataka VAT Act.

54. Section 17 of the Karnataka VAT Act relates to partial rebate and deals with contingencies where the final products are more than one and the output tax is payable only on some products with the other remaining products being exempted from the payment of tax. In the said case as no tax was payable on the **'by-product'**, the ITC was only partially admissible. Rule 131 of the

Karnataka Value Added Tax Rules, 2005 (for short "**KVAT Rules**") relates to the apportionment of ITC in cases of dealer falling under Section 17 of the Karnataka VAT Act.

55. The relevant portion of Section 17 of the Karnataka VAT Act and Rule 131 of KVAT Rules are reproduced below:

> *"17. Partial rebate.- Where a registered dealer deducting input tax.-*
> *(1)* ***makes sales of taxable goods and goods exempt under Section 5, or***
>
> *xxx xxx xxx*
>
> *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:"*
>
> (Emphasis supplied)

56. This Court while examining Section 17 of the KVAT Act, read with Rule 131 of the KVAT Rules, held that ITC was admissible to the extent of inputs used in the sale of taxable goods. The relevant observations of this Court are reproduced below:

"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).

xxx xxx xxx

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 Civil Appeal Nos. 15049-15069/2017 Page 24 of 26 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."

(Emphasis supplied)

57. In the case of ***M.K. Agro Tech*** (supra), this Court held that only partial ITC was permitted to the assessee as they were making taxable and exempted sales from the dutiable raw materials procured by them. In Para 28, this Court has elaborated on the scheme under the Karnataka VAT Act, to emphasise that the provision which allows partial rebate is made applicable on the '**sales**' of taxable goods and goods exempt under Section 5. It refers to '**sale**' of '**goods'**, taxable as well as exempt, and is not relatable to the **'manufacture'** of the goods. Further elaboration has been made to hold that upon the 'sale' of goods exempted under Section 5 of the Karnataka VAT Act, partial rebate shall only be admissible.

58. This Court in the said case, permitted only partial ITC as the wordings of the provision relates only with 'sale' and not 'manufacture. This distinction has also been acknowledged.

59. In such circumstances as aforesaid, we are of the view that the decision of ***M.K. Agro Tech*** (supra), is not applicable to the case on hand as the provisions under the Karnataka VAT Act are quite different compared to that of the UP VAT Act in regard to the scheme of ITC.

60. Section 11 of the Karnataka VAT Act reads thus:

> "***11. Input tax restrictions. –***
>
> *(a) Input tax shall not be deducted in calculating the net tax payable in respect of* –
>
> *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;*"

61. Section 11(a)(1) of the Karanataka VAT Act as above specifically stipulates that where a sale of exempt goods takes place i.e., there is no output tax received on such sale, the input tax paid for manufacturing/processing such exempt goods cannot be credited while calculating the net tax. It is beyond any pale of doubt that the UP VAT Act does not provide for any such scheme or provision that aims at achieving the same.

62. *Au contraire*, Explanation (iii) to Section 13 read with Section 13(3)(b) UP VAT Act, as outlined above, seeks to create a deeming fiction where during the manufacture of any taxable goods any exempt goods are produced as by-product or waste product, it shall be deemed that the purchased goods have been used in the manufacture of taxable goods. The

scheme under the UP VAT Act therefore, is wholly distinct from the one provided in the Karnataka VAT Act.

63. The Karnataka VAT Act with the aid of Section 17 read with Rule 131 of the Karnataka VAT Rules seeks to provide a statutory mechanism for grant of partial rebate where a registered dealer deducting input tax makes sale of taxable goods as well as exempt goods. The apportionment and attribution of input tax deductible between such sales and dispatch of goods for such purpose, shall be made in accordance with Rule 131 of the KVAT Rules and any input tax deducted in excess becomes re-payable forthwith. Further, Rule 131 of the KVAT Rules specifically provides that 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.***

64. However, the scheme under the UP VAT Act is not the same as in Karnataka and no such provision regarding calculation of the apportionment etc., has been provided for under the UP VAT Act. The reliance by the High Court therefore on this decision is not correct. It is not applicable to the facts of the present case, and could not have been relied upon to deny the full ITC to the assessee.

65. Under Section 13(1)(a) read with S. No. 2 (ii) of the table appended and Section 13(3)(b) read with Explanation (iii) of Section 13, the scheme of ITC

is concerned with the '**manufacture**' of goods and not '**sale**' as dealt with in ***M.K. Agro Tech*** (supra).

66. Further, the deeming fiction as provided by the Explanation (iii) to Section 13 makes all the difference. It says that where during the manufacture of any taxable goods, any exempt goods are produced as by-products or waste product, it shall be deemed that the purchased goods have been used in the manufacture of taxable goods, creating a wholly distinct scheme to the one envisaged under the Karnataka VAT Act.

67. The following illustration highlights the difference between the ITC scheme envisaged under the Karnataka VAT Act and the scheme under the UP VAT Act:

I. <u>Karnataka VAT Act, 2003</u>

Total Sales = Rs. 1,000/-

Taxable goods = Rs. 250/-

Exempt goods/By-product = Rs. 700

Non-tax goods = Rs. 50

Total ITC on purchases = Rs. 100

In terms of the formula prescribed in Rule 131(3), the non-deductible ITC shall be as follows:

700 + 50/1000 * 100 = Rs. 75

Only Rs. 25/- will be allowed as ITC and Rs. 75 will be disallowed under Section 17 of the Karnataka VAT Act, read with Rule 131 of the KVAT Rules.

II. Uttar Pradesh VAT Act, 2008

Total Sales = Rs. 1,000/-

Taxable goods (RBO) = Rs. 250

Exempt goods (DORB) = Rs. 700

Non-VAT goods = Rs. 50

Total ITC on purchases = Rs. 100/-

In terms of Explanation (iii) to Section 13 of the UP VAT Act, both the taxable goods and the by-product will be eligible to claim ITC. The disallowance will be limited to non-VAT goods which is Rs. 50/-, thus the disallowance of ITC will be Rs. 5/- only."

68. The aforesaid discussion as regards the salient features of the two enactments can be outlined briefly as under:

Provisions of the U.P. VAT Act and U.P. VAT Rules	**Provisions of the Karnataka VAT Act and Karnataka VAT Rules**
13. Input tax credit *(1) ...* *(f) Notwithstanding anything to the contrary contained in this sub-section where goods purchased are resold or goods manufactured or processed by using or utilizing such purchased goods are sold, at the price which in lower than* *(a) purchase price of such goods in case of resale; or* *(b) cost price in case of manufacture,* *the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale*	*Section 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;"*

value of goods or manufactured goods.	
	Section 17. Partial rebate. –Where a registered dealer deducting input tax- ***(1) makes sales of taxable goods and goods exempt under Section 5**, or* *(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."*
	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)….* *(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. "*

69. For all the foregoing reasons, we have reached to the conclusion that the High Court committed an error in passing the impugned judgment relying on the decision of this Court rendered in ***M.K. Agro Tech*** (supra).

70. In the result, both the appeals succeed and are hereby allowed.

71. The impugned common judgment and order passed by the High Court of Allahabad is hereby set aside and the orders passed by the Commercial Tax Tribunal dated 04.05.2016 and 05.07.2017 are hereby restored.

72. Pending applications if any shall stand disposed of.

…….CJI.
(Dr. Dhananjaya Y. Chandrachud)

…….J.
(J.B. Pardiwala)

…….J.
(Manoj Misra)

New Delhi:
November 6, 2023.