

**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 6553 OF 2016****NEHA ENTERPRISES****... APPELLANT(S)****VERSUS****COMMISSIONER, COMMERCIAL TAX,
LUCKNOW, UTTAR PRADESH****... RESPONDENT(S)****J U D G E M E N T****S.V.N. BHATTI, J.**

1. The appellant is a registered dealer under the Uttar Pradesh Value Added Tax Act, 2008 (for short, 'the Act'). The subject matter of the appeal relates to the turnover returns filed by the dealer for the assessment year 2010-11. The dealer recorded sales against the issuance of Form-E to the manufacturer-exporter, amounting to Rs. 1,89,35,100/-. The dealer claimed an input tax credit amounting to Rs. 6,42,260/-. The assessing officer, at the first instance, allowed input tax to the extent of Rs. 6,42,260/-. Subsequently, the assessing officer vide order dated 22.02.2013 made under section 28 of the Act disallowed the claim of an input tax credit of Rs. 6,42,260/-. In the instant appeal, we are concerned with the disallowance of the input tax credit claimed by the dealer.

2. The assessing officer in the assessment order, passed under section 28 of the Act, put the dealer on notice to hold that the dealer is not entitled to input tax credit for the purchase tax paid by him on the sales turnover made

in favour of the manufacturer-exporter. The dealer explained that the case of input tax claimed by the dealer falls within the scope of section 13(1) of the Act. Even though the subject turnover falls within the ambit of section 7(c) of the Act, the *proviso* or exception covered by section 13(7) of the Act is not attracted. The assessing officer noted that the subject sales or the subject turnover made against Form-E was accepted by the department. The exemption from payment of tax shall not be levied and paid on the turnover of sales or purchase of such goods by such class of dealers as may be specified in the notification issued on this behalf. The notifications dated 24.02.2010 and 25.03.2010 covered the procedure for dealing with the turnover falling within section 7(c) of the Act. Therefore, the input tax benefit is provided in accordance with the scheme outlined in section 13 of the Act. Section 13(7) is a *proviso*, and the said *proviso* stipulates that a transaction covered by section 7(c) of the Act is not entitled to input tax credit. Extending input tax credit in terms of section 13(1) of the Act would be contrary to sections 7(c) and 13(1) on the one hand and 13(7) of the Act on the other.

3. The dealer filed an appeal before the additional commissioner, and the first appellate authority vide order dated 22.07.2013 dismissed the appeal. The gist of the first appellate authority's findings is that the notification dated 24.02.2010 corresponds to section 7(c) of the Act. The notification exempts the direct sale of raw materials and spare parts to manufacturer-exporters from tax upon filing Form-E. The notification does not provide input tax credit facility to sellers having tax-exempted sales made in favour of manufacturer-exporters.

Section 13(7) constitutes an embargo, and once it is not disputed by the dealer that no tax turnover was recorded *vis-à-vis* the subject matter of the appeal, section 7(c) of the Act is attracted, and the consequential effect is that the dealer is not entitled to input tax credit. The order of the assessing authority was upheld in the second appeal filed by the dealer before the Tribunal of Commercial Tax, Meerut, Uttar Pradesh ("the Tribunal"), vide order dated 10.09.2013. The Tribunal, in the admitted facts and circumstances of the case, confirmed the view taken by the assessing officer and the first appellate authority. The Tribunal, in its fine reasoning, culminated in the conclusion that section 13(1)(a) provides for which traders' input tax credit shall be allowed. The appellant's argument that input tax credit will not be allowed until section 13(1)(a) is amended is legally untenable, as it has been stipulated in section 13(7) that input tax credit will not be allowed in a few instances. Notifications no. 247 dated 24.02.2010 under section 7(c), circular dated 25.03.2010 issued by the commissioner of commercial tax and the order of the commissioner of commercial tax under section 59 dated 30.04.2010, are related to providing facilities to exporters. In these circulars, no facility has been given to the exporter-sellers. It is clear from section 13(7) that if any notification has been issued under section 7(c), then no facility of input tax credit will be allowed to the selling dealer. Hence, the law is against the appellant, and the action of the assessing officer regarding the reversal of input tax credit is justified.

4. The dealer filed a revision before the High Court and, through an order dated 24.11.2014, the revision was dismissed. The operative portion of the order impugned reads thus:

“Bare reading of the provisions of Section 13(7) clearly reveals that the applicant was not entitled for the input tax credit with respect to the sale of goods exempted under Section 7(c) of the Act. Tribunal has considered the facts of the case and held that in view of the provisions of Section 13(7) of the Act, the applicant was not entitled for input tax credit.

Under the facts and circumstances of the present case, the input tax credit was lawfully reversed by the Assessing Authority. I find no infirmity in the impugned order of the Tribunal. Question of law is answered in favour of the revenue and against the assessee.”

5. Hence, the Civil Appeal.

6. Mr. Udayan Jain, learned Counsel for the appellant, contends that the denial of input tax credit is *prima facie* illegal and unsustainable. The notification under section 7(c) of the Act read in the context of policy would show that the notification has been issued to encourage manufacturer-exporters in the State of Uttar Pradesh. The exemption from tax to the manufacturer-exporter, if, on the one side, promotes trade and commerce, denial of input tax credit to the seller/dealer, on the other hand, would be counterproductive to the very policy of the State Government. Section 13(7) should be read by appreciating its intent, and the input tax credit should not be denied by applying section 7(c) and the notifications issued. The argument,

however, has been presented in a different perspective. The emphasis of the argument is to read section 7(c) in conjunction with section 13(1) and grant an input tax credit to the dealer. The turnover against Form-E filing has not been properly appreciated by all the authorities.

7. Mr. Bhakti Vardhan Singh, learned Counsel appearing for the respondent, contends that the case of the dealer falls under section 7(c) read with the notifications dated 24.02.2010 and 25.03.2010. The dealer, by filing Form-E, recorded a turnover of Rs. 1,89,35,100/-. The dealer, therefore, is disentitled to input tax credit by operation of section 13(7). It is pointed out that input tax credit is available strictly as per the expression. In the interpretation of taxing statutes, intent does not form the guiding principle. There is no ambiguity in preferring an interpretation that is favourable to the dealer. The expression is clear, and the findings, both in law and fact, recorded by the courts below, do not warrant interference under Article 136 of the Constitution of India.

8. We have heard the learned Counsel and perused the record.

9. To avoid repetition, we have set out the gist of the reasoning and the conclusion of the authorities under the Act and the High Court. The admitted circumstances are that the subject turnover of Rs. 1,89,35,100/- has been brought within the fold of section 7(c) of the Act read with notifications dated 24.02.2010 and 25.03.2010. The consequence of such treatment is that the dealer was unable to sell the goods to the manufacturer-exporter without collecting the tax from the said manufacturer-exporter. For the said turnover,

the dealer claims an input tax credit on the purchase tax paid by the dealer.

The entitlement is appreciated through the following schematic excerption and

consideration of the sections, notifications and the exception in section 13(7):

“Section 7. Tax not to be levied on certain sales and purchases- No tax under this Act shall be levied and paid on the turnover of

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) such sale or purchase; or sale or purchase of such goods by such class of dealers, as may be specified in the notification issued by the State Government in this behalf”

“Section 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

Sl. 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 commerce; or (iii) in the course of the export of the goods out of the territory of India.	Full amount of input tax

xxx xxx xxx

xxx xxx xxx

13(7) Except where-

(a) purchased goods; or

(b) manufactured goods which are manufactured by using purchased goods; or

(c) packed goods which are packed by using or consuming purchased goods.

are to be sold in the course of the export of the goods out of the territory of India, no credit of any amount of input tax shall be claimed by a dealer under sub-section (4) and no facility of input tax credit shall be allowed to a dealer in respect of purchase of any goods, where –

- (i) sale of such goods by the dealer is exempt from payment of tax under clause (c) of section 7; or*
- (ii) such goods are to be used or consumed in manufacture or packing of any goods and sale of such manufactured or packed goods by the dealer is exempt from payment of tax either under clause (b) or clause (c) of section 7.*
- (iii) such goods are for transfer of right to use such goods.”*

Notification dated 24.02.2010

“Manufacturer-exporter of any raw materials, processing materials consumable stores, spare parts, accessories, components, lubricants, fuel other than petrol and diesel and packing materials for use in the manufacture of goods by him or in the packing of goods manufactured by him - Turnover of direct sale to or direct purchase by - Exempt subject to conditions.

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xxx xxx xxx

In the exercise of powers under clause (c) of section 7 of the Uttar Pradesh Value Added Tax Act, 2008 (U.P. Act No. 5 of 2008), the Governor is pleased to direct that no tax shall be payable under the said Act, with effect from April 01, 2010 on the turnover of direct sale to or direct purchase by manufacturer-exporter of any raw materials, processing materials, consumable stores, spare parts, accessories, components, lubricants, fuel other than petrol and diesel and packing materials for use in the manufacture of goods by him or in the packing of goods manufactured by him subject to the following conditions:”

xxx xxx xxx

Notification dated 25.03.2010

“OFFICE OF THE COMMISSIONER, COMMERCIAL TAX, UTTAR PRADESH

LEGAL SECTION

LUCKNOW: DATED 25.03.2010.

xxx xxx xxx

In the above notification there is provision of presenting declaration in prescribed form by the Commissioner in order to take benefit of the facility for which form 'E' is prescribed. By the letter of headquarter no. VAT/form-D maintenance procedure / 2007- 2008/511/Commercial Tax dated 14.01.2008 for the purchase of diesel oil, furnace oil etc. by the manufacturer form 'D' was prescribed which was amended by letter no. 680/ dated 13-03-08. Similarly to form 'D', form 'E' is prescribed in pursuance of directions as referred

in notification dated 24.02.2010 for direct sale or purchase by the manufacturer / exporters of raw material, processing material, consumable stores, spare parts, accessories, components, lubricants, fuel other than petrol and diesel and packing materials for use in manufacture of goods by him or in the packing of goods manufactured by him. The maintenance and use this will be done as per the directions given in the letter dated 13-03-09. Before the use of form 'E', the Tax Assessing Officer will counter sign on the original copy of form 'E' upon affixing EE series stamps."

10. The argument of the dealer proceeds by falling on section 13(1) of the Act. The argument also attempts to give effect to the intention or policy of the State Government. Plainly interpreting and applying section 7(c) provides that no tax under the Act shall be levied and paid on the turnover of sale or purchase of such goods by such class of dealers as may be specified in the notification. The said exemption applies to the goods and also to the class of dealers who satisfy the conditions and fall within the notification issued under section 7(c) of the Act. The controversy is not over the exemption from levy and collection of tax between the dealer and the department, since the subject turnover falls admittedly under section 7(c) of the Act, read with notifications dated 24.02.2010 and 25.03.2010. The said admitted position takes us to the entitlement or eligibility of the dealer for the input tax credit. It is axiomatic, particularly in tax jurisprudence, that distinct concepts, such as taxable persons, taxable goods and taxable events, are established for levying and collecting the tax. Similarly, the scheme of availing input tax credit is determined by section 13 of the Act. Section 13(1) provides for allowing credit of an amount as input tax credit to the extent provided by or under the relevant clause to which the applicable condition is attracted. If the purchased goods are resold in the course of exporting the goods out of India, then the full amount

of input tax credit can be claimed. Section 13(7) outlines the circumstances under which such a benefit cannot be allowed. Section 13(7) also sets out that no facility for input tax credit shall be allowed to a dealer with respect to the purchase of any goods where the sale of such goods by the dealer is exempt from tax under Section 7(c) of the Act. The prohibition from allowing input tax credit is a statutory mandate, and the view taken by the orders impugned, in the facts and circumstances of this case, is available and correct. In the teeth of clear expression in section 13(7) of the Act, we find it difficult to give effect to the intent or policy made known through notifications to grant input tax credit. The dealer availing section 7(c) of the Act knows the extent to which the input tax credit could be claimed. Hence, the Civil Appeal fails, and is accordingly dismissed. There shall be no order as to costs. Pending applications, if any, shall stand disposed of.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N BHATTI]

**NEW DELHI;
APRIL 9, 2025**