

**Court No. - 1**

**Case :- SALES/TRADE TAX REVISION No. - 87 of 2023**

**Revisionist :-** The Commissioner, Commercial Tax, U.P.  
Lucknow

**Opposite Party :-** S/S Cribhko Shyam Fertilizer Ltd.

**Counsel for Revisionist :-** Avinash Chandra Tripathi

**Counsel for Opposite Party :-** Shubham Agrawal

**Hon'ble Shekhar B. Saraf,J.**

(Judgement dictated in Open Court)

1. Heard Sri B.K.Pandey, Additional Chief Standing Counsel on behalf of the revisionist, Sri Shubham Agarwal, counsel appearing on behalf of the respondent and perused the relevant orders.

2. This revision petition has been admitted on the following question of law :-

*"1. Whether on the facts and circumstances of the case the Commercial Tax Tribunal as well as Ist Appellate Authority were legally justified in granting benefit of ITC as claimed and in deleting the amount of demand raised by the assessing authority?"*

3. Brief facts of the case are that the respondent/assessee is a registered trader and is engaged in the business of manufacturing and selling Urea fertilizer. A show cause notice was issued by the Assessing Officer in relation to the

deficiencies found during the investigation of the case for the assessment year 2014-15. But due to some points not being found acceptable in the explanation given by the trader in compliance with the notice issued due to low selling price of the goods, the input tax credit (hereinafter referred to as 'ITC') of Rs.97,83,860.00 totaling Rs.1,14,67,143.00 has been reversed under Section 13(1) (f) of the Uttar Pradesh Value Added Tax Act, 2008 (hereinafter referred to as 'the Act') vide order dated March 30, 2018. The First Appeal was filed by the trader against the said order, while disposing of which, the first appellate authority accepted the appeal of the trader and cancelled the disputed amount of Rs.70,76,786.00. In appeal before the Tribunal, the revenue's stand was rejected. Hence, this revision.

4. The case of the State is that the ITC benefit is available to the assessee only with regard to goods that has been purchased in the State of Uttar Pradesh and which are the goods on which VAT is paid.

5. Mr. Pandey has placed reliance upon Sections 13(1) and 3(1)(f) of the Act read with Rule 23(6) of the U.P. Value Added Tax Rules, 2008 (hereinafter referred to as 'the Rules'). The said Sections are provided below and reads as

follows :-

*"13(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:*

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*13(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 where 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."*

6. Furthermore, Rule 23(6) of the Rules is also delineated below for further clarification :-

*"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 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."*

7. Mr. Pandey, submitted that the benefit of ITC should be limited to the total purchase of the VAT goods which is 2.53% of the total goods purchased by the assessee. He submitted that as the ammonia manufactured in the establishment has been sold for Rs.7,08,91,43,307/-, the amount of transfer of VAT goods comes to Rs.17,88,00,216/- at the rate of 2.53%. In his view, the VAT goods used in manufacturing was of Rs.37,44,77,423/-, which was higher than the 2.53% of the transfer value of the final product. He, accordingly, contended that only 2.53% of Rs.17,88,00,216/- should be allowed as ITC and the balance amount should be taxed at the rate of 5%.

8. The Tribunal has examined the provisions of the Act and come to a finding that the assessee claimed ITC of Rs.1,43,83,587/- in the relevant year against which tax of Rs.13,27,46,784/- has been deposited on the sale of manufactured urea, which is many times more than the claimed ITC. Accordingly, Tribunal held that Section 13(1)(f) would not be applicable to the assessee, and accordingly, upheld the order of the Appellate Authority.

9. Upon perusal of the documents, the finding of the Tribunal seems to be crystal clear and leaves no room for doubt. The assessee has paid far more tax than the ITC claimed, and accordingly, the rigours of Section 13(1)(f) of the Act would not be applicable to the assessee. There does not appear any need for interference in the order passed by the Tribunal.

10. With the above observations, this writ petition is dismissed.

**Order Date :- 30.1.2024**

Dev/-

**(Shekhar B. Saraf,J.)**