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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16th DAY OF JUNE 2010

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION No. 10183 OF 2007(T-RES)
A/W WRIT PETITION No. 15034 OF 2007(T-RES)
A/W WRIT PETITION No. 14231 OF 2008 (T-RES)
A/W WRIT PETITION No. 15021 OF 2008(T-RES)

WP No. 10183 OF 2007BETWEEN:

M/s. Suman Enterprises.
"Suman", New Parallel Road,
Annanagar,
Shimoga.
By Sole Proprietrix,
Smt. Sageera Banu,
Aged 40 years,
W/o Mr. B. Abdul Rahim.

...PETITIONER

(By Shri. B.P. Gandhi, Advocate)

AND:

1. The State of Karnataka
Represented by
Chief Secretary,

Vidhana Soudha,
Dr. Ambedkar Veedhi,
Bangalore-560 001.

2. The Commissioner of
Commercial Taxes,
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-560 009.

...RESPONDENTS

(By Shri. K.M. Shivayogiswamy, High Court Government
Pleader)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to declare Section 18-A of the KVAT Act, prescribing deduction of tax at source from the sale price at the rate of 4% without taking into consideration the input tax credit is unconstitutional and violate of Article 14, 19, 265 and 300A of the Constitution and prays to declare Section 18-A of KVAT Act, as Constitutionally void and unenforceable in so far as petitioner is concerned and etc.,

WP No. 15034 OF 2007

BETWEEN:

M/s. Rashmi Enterprises
No. 3, Annapurna Nilaya,
2nd Cross, Panchavati Colony,
Shimoga-577 202.
Represented by its
Managing Partner,
Mr. S.R. Lakshmikantha,

Aged about 40 years,
S/o. S. R. Rangappa.

...PETITIONER

(By Shri. H.S. Hayath Khan Naushad, Advocate)

AND:

1. State of Karnataka
Represented by its
Principal Secretary to Government,
Finance Department,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.

2. Commissioner of Commercial
Taxes Karnataka
Vanijya Therige Karyalaya,
Gandhinagar,
Bangalore-560 009.

... RESPONDENTS

(By Shri. K.M. Shivayogiswamy, Advocate)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to declare Section 18 of the KVAT Act, 2003 prescribing deduction of Tax at source from the sale price at the rate of 4% without taking into consideration of the input tax credit is unconstitutional and violate of Article 14, 19 265 and 300A of the Constitutionally void and unenforceable in law in so far as the petitioner is concerned and etc.,

WP No. 14231 OF 2008

BETWEEN:

1. M/s. Kavitha Sales Corporation
No. 14, Royal Park,
34, Park Road, Tasker Town,
Shivajinagar,
Bangalore-560 051.
Represented by its Proprietor
Sri. Saidas Malladi
Aged about 63 years,
S/o late Somanadha Sarma.
2. M/s. Bhuwalka Alloys Private. Limited.
No.5, Walkar Lane (on Langford Road)
Richmond Town,
Bangalore-560 025.
Represented by its Director,
Sri. Kishan Kumar Bhuwalka,
Aged about 44 years,
S/o Late Balchand Bhuwalka.
3. M/s. Bhuwalka and Sons Private. Limited.
No.5, Walkar Lane (on Langford Road)
Richmond Town,
Bangalore-560 025.
Represented by its Director,
Sri. Kishan Kumar Bhuwalka,
Aged about 44 years,
S/o Late Balchand Bhuwalka.
4. M/s. Deccan Alloys Private Limited
No.5, Walkar Lane (on Langford Road)

Richmond Town,
Bangalore-560 025.
Represented by its Director,
Sri. Kishan Kumar Bhuwalka,
Aged about 44 years,
S/o Late Balchand Bhuwalka.

5. M/s. Agarwal Brothers Steel Rolling Mills
No.92, Industrial Suburb,
Yeshwanthapur,
Bangalore-560 022.
Represented by its Proprietor
Sri. Saidas Malladi
Aged about 63 years,
S/o late Somanadha Sarma.

6. M/s. Karnataka Metal Corporation
No.14, 'Royal Park',
34, Park Road, Shivajinagar,
Bangalore-560 051.
Represented by its Proprietor,
Smt. Lalitha M.
Aged about 58 years,
W/o Sri. S. Malladi.

7. M/s. Bhuwalka Steel Industries Limited.,
10th Mile, Old Madras Road,
Bangalore-560 049.
Represented by its Director,
Sri. Ajay Bhuwalka,
Aged about 32 years,
S/o Sri. Suresh Kumar Bhuwalka.

8. M/s Nava Karnataka Steels Private Limited
Ananthapur Road, Bellary,

Represented by its Director,
Sri. Ajay Bhuwalka,
Aged about 32 years,
S/o Sri. Suresh Kumar Bhuwalka.

9. M/s. Bhuwalka Trade Links Private Limited
10th Mile, Old Madras Road,
Bangalore-560 049.
Represented by its Director,
Sri. Ajay Bhuwalka,
Aged about 32 years,
S/o Sri. Suresh Kumar Bhuwalka.

10. M/s. V.R.K.P. Steel Industries
Private Limited
Budigere Cross, Old Madras Road,
Bangalore-560 049.
Represented by its Director,
Sri. Vinod Agarwal,
Aged about 45 years,
S/o Shri. Bhagirat Agarwal.

... PETITIONERS

(By Shri. G. Rabinathan, Advocate)

AND:

1. State of Karnataka
Represented by its
Principal Secretary to Government,
Finance Department,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.

2. Commissioner of Commercial
Taxes Karnataka
Vanijya Therige Karyalaya-I,
Gandhinagar,
Bangalore-560 009.

... RESPONDENTS

(By Shri. K.M. Shivayogiswamy, High Court Government Pleader
for Respondent)

This Writ Petition is filed under Articles 226 and 227 of the
Constitution of India, praying to quash the provision of Section-
18-A of KVAT Act, 2003 in so far as petitioner concerned and
etc.,

WP No. 15021 OF 2008

BETWEEN:

1. M/s. Matangi Iron & Steel Company
Represented by its Proprietor,
Shri. Dhiraj Aggarwal,
Aged about 44 years,
No.13, 17th Main,
HAL 2nd Stage,
Indiranagar,
Bangalore-560 008.
2. M/s. Mukesh & Company
Represented by its Proprietor,
Shri. Mukesh Tibriwal,
Aged about 33 years,
No.18, 2nd Floor,
Next to Jain Bhavan,

Andree Road,
Shanthi Nagar,
Bangalore-560 027.

3. M/s. Shri Bhuvaneshwari Steel Suppliers
Represented by its Proprietor,
Shri. Satish Kumar Gupta,
Aged about 42 years,
No.14, 9th Main, 1st Cross,
I.T.I Layout, 3rd Block,
Near Nagarbhavi 1st Stage,
Nayandanahalli,
Bangalore-560 039.
4. M/s. Lakshmi Steel Traders
Represented by its Partner,
Shri. K.S. Ashok Kumar,
Aged about 55 years,
No.19, Shanthappa Lane,
Bangalore-560 002.
5. M/s. Jindal Steels
Represented by its Partner,
Shri. Sushil Jindal,
Aged about 42 years,
No. 110/7, Krishnappa Layout,
Lalbagh Road,
Bangalore-560 027.
6. M/s. Shri. Lakshmi Steel Suppliers,
Represented by its Proprietor,
Shri. Vinod Kumar Singhal,
Aged about 55 years,
M-04, No. 35/17, Langford Road,
Premier Presidency,

Bangalore-560 025.

7. M/s. Tejas Steel Products
Represented by its Partner,
Shri. Gaurav Kapoor,
Aged about 35 years,
B-8, ITI Ancillary Industrial Estate,
Whitefield Road,
Mahadevapura,
Bangalore-560 048.
8. M/s. Urvashi Trading Company
Represented by its Partner,
Shri. Rajesh Kapur,
Aged about 45 years,
Kandan Complex,
No.60, Rukmani Colony,
St. John's Road Cross,
Bangalore-560 042.
9. M/s. Aastha Minmet (I) Private Limited
Represented by its Proprietor
Shri. Mohit Agarwal,
Aged about 27 years,
Flat No. 402, Motati Meadows,
C.V. Raman Nagar,
No. 84/1B,
Old Madras Road,
Bangalore-560 093.
10. M/s. Steel Exchange India Limited
Represented by its Manager,
Shri. V. Srinivas,
Aged about 44 years,
No.32, Ground Floor,

Gold Tower,
50, Residency Road,
Bangalore-560 025.

...PETITIONERS

(By Shri. R.V. Prasad, Advocate)

AND:

1. The State of Karnataka
Represented by its
Finance Secretary,
Vidhana Soudha,
Bangalore-560 001.
2. The Commissioner of Commercial Taxes
in Karnataka.
Vanijya Therige Karyalaya Building,
Gandhinagar,
Bangalore-560 009.

... RESPONDENTS

(By Shri. K.M. Shivayogiswamy, for Respondents No. 1 & 2)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to declare that the notification dated 28.07.2008 issued by the Respondent no.2 vide Annexure-A is violative of Articles 14 and 19(1) (g) of the Constitution of India and is ultravires the provisions of the Act, in so far as the petitioner are concerned and etc.,

These petitions having been heard and reserved on 03.06.2010 and coming on for pronouncement of orders this day, the Court delivered the following:-

ORDER

These petitions are heard and disposed of together as they are filed on identical grounds and in similar circumstances.

2. The petitioners in WP14231/2008 are dealers registered under the Karnataka Value Added Tax Act, 2003, (hereinafter referred to as the 'Act' for brevity). They are engaged in the business of manufacture of iron and steel rolled products which are produced in their steel re-rolling Mills and also produce other construction material and they are also engaged in the sale and purchase of iron and steel rolled products. As manufacturers, the petitioners purchase mild steel ingots and billets from registered dealers under the Act and use the goods as inputs and raw-materials in the manufacture of iron and steel rolled products such as tor steel, mild steel rods, angles and so on. As traders, the petitioners purchase iron and steel rolled products from dealers registered under the Act. In both the cases namely, as manufacturers and as traders, the sales effected by the petitioners

fetches them a profit margin of Rs.50/- to Rs.100/- on an average sale price of Rs.34,000/- per metric ton of iron and steel construction material.

3. Shri G.Rabinathan, learned Advocate appearing for some of the petitioners contends that section 3(1) of the Act prescribes levy of tax on sale of goods, Section 4 (1)(a)(ii) read with serial number 30 of the Third Schedule prescribes a rate of tax at 4% on iron and steel as declared goods. Further Section 10(3) provides for input tax credit or deduction for the tax paid on goods purchased from registered dealers, the liability to tax to be discharged by them is limited to tax computed as the net tax. Net tax is the amount of tax arrived at by deducting from the output tax payable, on the taxable sales effected in each calendar month (which is the tax period) the amount of input tax, paid on all purchases of taxable goods, made from registered dealers, in the same tax period.

It transpires that the State Legislature by the Karnataka Act 6 of 2007 inserted Section 18-A with effect from 1.4.2007, prescribing deduction of tax at source in respect of oilseeds or non-refined oil or oil cake or scrap of iron and steel or any other goods as may be notified by the Commissioner. Sub-section (1) of Section 18-A prescribes that every registered dealer purchasing the aforesaid goods and other goods as may be notified by the Commissioner of Commercial Taxes for use in the manufacture or processing or any other purpose as may be notified by the Commissioner, shall deduct tax payable on the sale of such goods under Section 4 of the Act. Sub-sections (2) to (10) of Section 18-A prescribed conditions that the dealers effecting deduction of tax at source shall send statements to the prescribed authority every month, containing particulars of the tax deducted by them during the preceding month and pay the amount of tax deducted within 20 days after the close of the preceding month and that they shall also furnish to the selling dealers from whom the tax is deducted a Certificate in Form –VAT 161 as the Certificate of tax

deduction. Rule 44 of Karnataka Value Added Tax Rules, 2005 (hereinafter referred to as 'the Rules Act' for brevity) prescribes the procedure in this regard.

It is contended that the Commissioner of Commercial Taxes in exercise of powers conferred by Sub-section(1) of Section 18-A of the Act issued Notification dated 28.7.2008, specifying that with effect from 1.8.2008, registered dealers purchasing, inter alia, iron and steel for use in the execution of works contracts from other registered dealers shall deduct tax at source as specified under Section 18-A. The petitioners therefore seek to question the power conferred on the Commissioner of Commercial Taxes under Section 18-A and the Notification aforesaid issued by the Commissioner in this petition.

4. In WP 15034/2007, the petitioner is a wholesale dealer dealing in rice bran who claims to be also affected by virtue of the Notification aforesaid issued by the Commissioner of Commercial

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Taxes in exercise of power conferred on him under Section 18-A of the Act and seeks to question the same.

5. In WP 15021/2008, the petitioners are registered dealers who purchase iron and steel from manufacturers of the said products and effect the sale to registered dealers under the Act engaged in the activity of works contract of construction. Being aggrieved by the Notification aforesaid, the petitioners are before this court.

6. In WP 10183/2007, the petitioner is a dealer in rice bran and claims to be similarly affected as the other petitioners above.

7. It is contended by the Counsel for the petitioners that insofar as iron and steel are concerned, they are declared goods specified at Serial Number 30 of the Third Schedule to the Act and the rate of tax prescribed under Section 4 (1)(a)(ii) is 4%. Accordingly, the petitioners issue tax invoices for sale of iron and steel including iron and steel construction material charging tax at

4% which represents the output tax prescribed under section 10(1) of the Act. The petitioner's liability to pay tax, it is contended, is limited to net tax which is the amount arrived at by deducting from the total amount of output tax payable, the amount of input tax paid on purchases of taxable goods from registered dealers in one and the same tax period. However, consequent upon the Notification aforesaid on all the sales of iron and steel construction materials effected by the petitioners engaged in the execution of civil works contracts, the purchasing dealers effect deduction of tax at source for the full amount of tax charged at 4% on the total sale prices. It is the complaint of the petitioners that such deduction of tax at source seriously affects the petitioners in that, the tax at 4% which otherwise is realised by the petitioners ceases to be available to them and the petitioners are required to meet the liability of net tax payable from out of their profits which incidentally is very nominal.

The petitioners contend that the effect of the Notification is that the deduction of tax at 4% on the sale price at which the petitioners sell the iron and steel construction materials is far in excess of the net tax payable by the petitioners towards discharging the liability to tax prescribed under the Act. This is graphically explained by the petitioners with reference to these examples:

In the cases of petitioners who are manufacturers of iron and steel Construction materials :

	Quantity	Purchase Value (Rs.)	Tax paid on Purchases At 4% (Rs.)
MS ingots and billets which Are the raw materials used In the manufacture of iron and Steel rolled products – construction materials	1 MT	30,000	1,200
		Sale price	Output tax
Sale price at which iron and Steel rolled products – Construction materials are Sold and the amount of output tax payable	1 MT	34,000	1,360

Tax paid on purchases as above eligible for deduction from the output tax payable on sales of iron and steel construction materials as per provisions of Section 10(3) of the Act			1,200
Net tax:			
Net tax payable towards discharging the liability to tax prescribed under the Act (Rs.1,360 minus Rs. 1,200)			160
Amount of tax to be deducted at source :			
Amount of tax to be deducted at source at 4% on sale price as required by the Commissioner of Commercial Taxes			1,360

In the cases of petitioners who are traders who purchase and sell iron and steel construction materials :

	Quantity	Purchase Value (Rs.)	Tax paid on Purchases (Rs.)
Iron and steel construction materials purchased from registered dealers	1 MT	34,000	1,360
		Sale price	Output tax
Sale price at which iron and Steel rolled products – construction materials are sold and the amount of output tax payable	1 MT	34,100	1,364
Tax paid on purchases as above eligible for deduction from the output tax payable on sales of iron and steel construction materials as per provisions of section 10(3) of the Act.			1,360
Net tax:			
Net tax payable towards discharging the liability to tax prescribed under the Act (Rs.1,364 minus Rs.1,360)			4

Amount of tax to be deducted at source:			
Amount of tax to be deducted at source at 4% on sale price as required by the Notification issued by Commissioner of Commercial Taxes.			1,364

It is thus contended that the amount of tax specified for deduction is far higher than the amount of net tax that the petitioners are required to pay towards discharging the liability to tax prescribed under the Act.

It is contended that the law is well settled that a mechanism to collect tax in advance cannot operate to deduct tax more than the tax payable under the provisions of the Act. In this regard, reliance is placed on the judgement of a Division Bench of this court in *M/s Larsen and Toubro Limited vs. State of Karnataka* [2003] 129 STC 401, and the judgement of the apex court in *Steel Authority of India Limited vs. State of Orissa*, 118 STC 297.

It is contended that the intention and object of the Notification impugned is not clear as there is no rationale apparent, as it is without any nexus with the object sought to be achieved and therefore seek that the petitions be allowed as prayed for.

8. Shri B.P. Gandhi appearing for the petitioner in WP 10183/2007 would add that the petitioner therein deals in rice bran and pays tax on rice bran whenever such purchases are made from the registered dealers under the Act. Rice bran is a specified commodity under the Third Schedule to the Act, and all commodities enumerated therein are subject to VAT. The petitioner is entitled to take into consideration the aforesaid input tax against any liability on the sale of rice bran. It is stated that the petitioner sells his goods on credit. The buyer pays the price later but he is now obliged to deduct tax at 4% out of the price payable for the goods sold to him. The buyer is obliged to issue a TDS Certificate after the sale price is paid. But since the purchase is on

credit basis, such a Certificate is issued much later, whereby the petitioner is not able to take credit for the tax deducted at source during the prescribed period within which the monthly return is filed for the previous month. Therefore, though a substantial portion of the tax is not payable, the petitioner is compelled to pay the same at the time of filing of monthly returns.

It is also pointed out that under Section 18-A with effect from 1.4.2007, commodities such as oil seeds, non-refined oil, oil cake and scrap of iron and steel are being subjected to deduction of tax at source. Rice bran with which the petitioner deals was not one of the commodities. However, the Commissioner of Commercial Taxes by virtue of power conferred under the section has included the same. It is contended that the Legislature has by this conferment of power on the Commissioner has divested itself of its legislative function and has vested the same in the Commissioner which is impermissible in law. The power so vested is unguided, uncanalised and arbitrary.

9. On the other hand, the learned Government Advocate contends that the Act which has come into force in April 2005 provides for levy of tax on sale or purchase of goods in the State on all commodities except petrol, aviation turbine fuel, diesel and sugarcane. Unlike the erstwhile Sales Tax Act, which was predominantly a legislation which contemplated single point tax on goods, the present Act seeks to levy tax at every point of sale of goods in the State and from a reading of the charging Section, section 3 and section 4 which prescribes the liability to pay tax and the rate thereof, it is clear that the State has the option to demand tax at the specified rates at every point of sale of goods, subject to section 5, by registered dealers under the Act. However, by virtue of Section 10(3) of the Act, a dealer registered under the Act while paying tax on his sales, which is called output tax, which he is permitted to charge and collect from his purchaser, is eligible to take deduction towards tax already paid on his purchases which is called input tax. The difference between the

output tax and the input tax is the net tax and the dealer is required to pay only the net tax. Further, under the Sales Tax Act, dealers were required to file monthly statements of turnover along with tax in advance and after the end of the year, by an annual returns of turnover along with any balance tax due for the year. However, under the present Act, most dealers are required to file monthly returns and these returns are deemed to have been accepted under Section 38 (1) of the Act and the dealers are permitted to adjust on their own in the input tax paid by them based on the tax invoices issued by the sellers towards the output tax liability and also claim refund of any excess input tax credit. Such excess input tax credit is required to be refunded within 15 days of the filing of the monthly return and any delay entails payment of interest to the dealer. This is a major advantage which the dealers enjoy under the present Act.

Further, it is contended, in view of the above advantage afforded to the dealers the dealers are required to declare the

actual tax liability in their returns and pay tax due in time. A default in this regard causes loss to the revenue. It is said to be the experience of the department that there was misuse of the scheme of input tax rebate and deemed assessment under the Act by dealers in certain trades. There were several instances of fabricated documents being utilised by unscrupulous dealers to claim the benefit. It was also discovered that certain registered dealers were issuing tax invoices even without actually selling the goods reflected therein, in order to facilitate false and illegal claims. It is in this background that the Legislature thought it fit to amend Section 18-A. As it was found that traders in the particular commodities that are now notified, were indulging in malpractices in a large number, the same have been notified in the impugned Notification. This is within the legislative powers provided under Entry-54 of List-II of the Seventh Schedule to the Constitution of India. It is Contended that there are several authorities of both the apex court as well as several High Courts upholding provisions such as this.

The contention put-forth by the petitioners, according to the learned Government Advocate, that the Notification enables deduction of tax far higher than the amount of net tax payable by the petitioners is not tenable, for the reason that but for the schemes of input tax rebate or tax deduction and adjustment of input tax paid towards output tax payable by a dealer, such a dealer would have been liable to pay his entire output tax liability and thereafter, on an order permitting of input tax paid towards output tax liability, the dealer would have been eligible for refund of any excess tax paid.

It is contended that the authorities cited by the petitioners in relation to deduction of tax at source in case of works contracts under section 19-A of the Karnataka Sales Tax Act, 1957, would have no bearing in relation to the scheme of taxation under the present Act. But section 18-A of the present Act does not suffer

from any such vice as was pointed out in respect of section 19 A of the previous Act.

10. In order to appreciate the rival contentions, it would be useful to extract Section 18-A of the Act and the Notification dated 28.7.2007, issued by the Commissioner of Commercial Taxes 2007:

“ 18.A. Deduction of tax at source in the case of certain goods.-

(1) Notwithstanding anything contained in this Act, every registered dealer purchasing oil seeds or non-refined oil or oil cake or scrap of iron and steel or any other goods as may be notified by the Commissioner, for use in manufacture of processing or any other purpose as may be notified by the Commissioner, shall deduct out of the amounts payable by him to the registered dealer selling such goods to him, an amount equivalent to the tax payable on the sale of such goods under Section 4.”

“GOVERNMENT OF KARNATAKA
(DEPARTMENT OF COMMERCIAL TAXES)”

No. KSA.CR.76/08-09

Office of the Commissioner of
Commercial Taxes in Karnataka,
Gandhinagar, Bangalore,
Dated: 28.07.2008.

NOTIFICATION

In exercise of the powers under sub-section (1) of section 18-A of the Karnataka Value Added Tax Act, 2003, it is specified with effect from the 1st day of August, 2008, that a dealer registered under the said Act purchasing iron and steel, hardware, timber, plywood, veneers, particle board, laminated sheets, panel boards and similar articles of wood for use in the execution of civil work contracts, from another dealer registered under the said Act, shall deduct tax at source as specified under the said Section.

Sd/-
(B.A. HARISH GOWDA)
Commissioner of Commercial Taxes,
in Karnataka, Bangalore.”

It is seen that in respect of all the goods mentioned in the above section and the Notification, the levy of tax prescribed under the charging provision of the Act is on the sales effected by registered dealers under the Act. The provisions prescribing the levy of tax on sale of taxable goods and the ultimate liability to tax to be discharged by dealers are Section 3 read with Section 4 and Section 10 of the Act. From an examination of the description of the goods involved, the rates of tax prescribed and the ultimate liability to tax to be discharged by the selling dealers as per sub-section (3) of section 10, is the net tax which is computed by deducting from the total amount of output tax on the total amount of input tax paid on the taxable goods purchased from registered dealers. In effect, the liability to tax to be discharged is an amount equivalent to 4% on the value addition as between the purchase price of inputs and sale price at which the named commodities are sold. The petitioners have, with regard to iron and steel, demonstrated that the net tax payable by them is far less than the amount of tax charged at 4% on the sale price of iron

and steel, which is the tax prescribed for deduction at source in Section 18-A and under the Notification issued. When the petitioners and the dealers engaged in the execution of works contracts are both governed by one and the same set of provisions of the Act and Rules, in the matter of furnishing of returns in Form VAT 100 and payment of net tax and when it is not the case of the Revenue that as between the petitioners and the dealers engaged in the execution of works contracts, the latter are more prompt and diligent in furnishing the tax compliance or that the petitioners could not be trusted to furnish the returns and to pay the tax with due diligence and promptitude, the rationale and the object of the impugned Notification is not readily discernible.

The following proposition of law laid down by the apex court in *Bhawani Cotton Mills Ltd. V. State of Punjab*, (1967) 20 STC 290, has been consistently followed in later decisions and holds the field, namely :

“ If a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a

possible contingency of refund at a later stage , will not make the original levy valid; because, if a particular sales or purchases are exempt from taxation altogether, they can never be taken into account , at any stage, for the purposes of calculating or arriving at the taxable turnover and for levying tax “

This proposition has been applied by the apex court in the case of *Steel Authority of India v. State of Orissa*, (2000) 118 STC 297 and by this court in the case of *Larsen & Toubro Ltd. V. State of Karnataka & others*, (2003) 129 STC 401.

The revenue seeking to justify the imposition on the petitioners of having to meet the liability in the first instance and pointing them to Rule 128 of the Karnataka Value Added Tax Rules, 2005, which provides for the contingency of a refund – on the purchasing dealer satisfying the obligation in furnishing the tax compliance, it is plain that as between the petitioners and purchasing dealers, there can be no presumption that the latter are more prompt and diligent in furnishing the tax compliance or that

the petitioners could not be trusted to furnish the returns and pay the tax with due diligence and promptitude.

In the light of the above, it is seen that by virtue of the impugned Section 18-A of the Act, the deduction of tax at source under the same exceeds the tax liability of the selling dealer. Though the selling dealer is enabled to claim the excess so paid – within the period prescribed – from the end of the tax period, the circumstance that such deduction exceeds the tax liability is directly opposed to the law as laid down by the apex court .

Incidentally, the contention put forward by the learned Government Advocate that with the amendment to Sub-section (4) of Section 18-A, it is now provided that a registered dealer, who is obliged to deduct tax at source on purchase of the commodities specified, should adjust the amount of tax so deducted at source under the provisions of Section 18-A(1), against his own net tax liability and therefore, there is no prejudice caused, is not tenable, for the reason that it is an amendment made with effect

from 1.8.2008, prospectively. Further, the illegality in the dealer deducting tax –who claims such deduction as ‘input tax’ - when determining his own ‘net tax’ liability apart from the amount of tax deducted at source, which is also adjusted into such determination, is overlooked. It is also to be seen that the amount of tax deducted at source is the amount of which, the selling dealer, could in the usual course claim deduction out of his net tax liability. It is actually the output tax charged by him as a selling dealer, and therefore it is he who could claim the deduction of the same out of his net tax liability. Indeed, this results in both the purchasing dealer and the selling dealer claiming deduction of the amount of tax deducted at source in remitting their respective tax liability - which results in the amendment being not only illegal, but actually counter-productive to the Revenue.

Though the State has the widest latitude, where measures of fiscal legislation are concerned, the same cannot, however, violate the right to equality of a citizen and if such repugnancy

prevails then, it shall stand voided to such extent. In other words, every law has to pass the test of constitutionality, which is but a formal name of the test of rationality. In a law made for the purpose of levying taxes or imposing a liability, directly or indirectly, in respect of a particular commodity - there is a kind of classification, which cannot be on the basis of surmises by the administrative authorities, on which the responsibility of delegated legislation is vested by the Constitution.

For all of the above reasons, the writ petitions are to be allowed.

The writ petitions are allowed accordingly. Section 18-A of the Act is violative of Article 19(1)(g) of the Constitution of India and is *ultra vires* the provisions of the Act. Further, the Notification No.KSA CR 76/08-09 dated 28.7.2008 issued by the Commissioner of Commercial Taxes is hereby quashed as being

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violative of Article 14 and 19(1)(g) of the Constitution of India
and being *ultra vires* the provisions of the Act.

Sd/-
Judge

nv