

BEFORE THE KARNATAKA APPELLATE TRIBUNAL

AT BANGALORE

This 09<sup>th</sup> Day of December, 2015. [C.H. - 03]

PRESENT:

1. SRI.UMESH MOOLIMANI
2. SRI. P. PUTTARAJU

District Judge Member.  
Commercial Taxes Memb

STA NO. 1922 to 1926/2009

And Cross Appeal Nos:466 to 470/2015



Cause Title of STA NO. 1922 to 1926/2009

BETWEEN:

M/s. Accurate Steels and Engg.Co.,  
#17/14, 1<sup>st</sup> floor, Shop No.1,  
MPM Lane, SJP Road Cross,  
Bengaluru

(By -G.Rabinnathan & M.Thirumalesh-Adv)

..... PETITIONER

AND:

State of Karnataka  
(Represented by State Representative)  
(By Smt. K.A.Uma - State Representative)

..... RESPONDENT

.....  
*re*  
9/12

STA No. 1922 to 1926/2009  
Cross Appeal Nos.466 to 470/2015

KAT

CH-3

Cause Title of Cross Appeal Nos:466 to 470/2015

**BETWEEN:**

State of Karnataka  
(Represented by State Representative)  
**(By Smt.K.A.Uma-State Representative)**

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**AND:**

M/s. Accurate Steels and Engg.Co.,  
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Bengaluru.  
**(By- G.Rabindranathan and M.Thirumalesh-Adv)**

..... RESPONDENT

**: JUDGMENT:**

The following **Judgment** of the Bench is delivered by  
: **Sri.Umesh Moolimani, District Judge Member:**

These five (05) appeals are filed u/s. 72(2) of the Karnataka Value Added Tax Act, 2003. (Hence forth it would be referred as the "**Act**".) contesting the common appellate order dated 21<sup>th</sup> July 2009 passed by the Joint Commissioner of Commercial Taxes (Appeals)-1, Bengaluru (hereinafter First Appellate Authority referred

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as 'FAA') in case Nos: VAT AP Nos:317 to 321/2009-10 has partly allowed by upholding the reassessment orders passed u/s 39(1) and penalty orders passed u/s 72(2) and interest u/s 36 of the Act. Being aggrieved by the order of the FAA these appeals are directed.

**2. Brief facts:-**

2.1 The appellant is a Dealer registered under the Provision of KVAT Act, 2003. The assessing authority has passed the re-assessment order u/s 39(1) of the Act.

2.2 The present appellant being aggrieved by the order of the assessing authority, filed those appeals before the FAA. After hearing, the first appellate authority partly allowed all the appeals partially confirming the re-assessment order.

**3. Grounds of appeals:-**

The reassessment order, penalty and interest orders are nearly on the ground that there was no movement of goods involved and selling dealers in question were not authorized to sell the goods under

their registration; the DCCT not make any enquiry with the LVO Co-granted by the registration to the said dealers and not made any attempt to investigation, thus the reassessment, penalty and interest orders are contrary to law and same are liable to be set-aside; the ITC claim has been rejected on the ground the goods had not been transferred and they had not paid any tax along with their returns and the goods sold to the appellant were not mentioned in their registration certificates; in the reassessment order the ITC claim in respect of 4 dealers has been rejected; the appellant produced the original tax invoices issued by the seven dealers; the original tax invoice the names of bank, amount paid for purchases by cheques were produced before the DCCT, were sufficient under law to claim ITC; though the appellant adduced documentary proof and discharge its burden; the documents submitted by the appellant in respect of seven dealers to show that they are in a distance and not fictitious and bogus; those seven dealers effected sales to the appellant by raising tax invoice charging sale price and tax at a prescribed rate and appellant made payments to them by cheques, all these details have been furnished to the DCCT; filing of Form VAT 100 on payment of tax are sufficient and

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inspection; the assessing authority not established any conspiracy carried out by the buyer and seller or else the government by creating documents as aliased in the order; section 70(2) attracts only in case false tax invoices produce; there is no any further investigation by the assessing authority, about those seven dealers; hence for all these reasons the order passed levying penalty u/s 72(2), levying interest u/s 36(1) of the Act are unsustainable so also the reasoning's assigned by the lower authorities while passing orders are not proper thus same are liable to be set-aside. For all the reasons pray to allow the appeals and set-aside the impugned orders.

**4. Grounds of the Cross appeals:-**

The appellant made ITC claim on local RD purchases; the AA based on the information from JCCT (INT.), did detailed examination of the records and found that the purchase bills were bogus and fabricated, thus disallowed the ITC in order u/s 39(1) and levied penalty u/s 70(2)(a); being aggrieved by the orders the appellant approached FAA who upheld the order passed by AA u/s 39(1) and 72(2) of the Act, whereas disallowed the levy of penalty u/s 70(2) of the Act; further submitted that the

division bench of the HHCK in similar case in STA No.01/2010 between Microqual Techno Pvt. Ltd., and State of Karnataka has upheld the levy of penalty u/s 70(2)(a); further submitted in case of Microqual that two of the five dealers from whom the appellant has effected the purchases are also the dealers from whom Microqual had effected purchase and claimed ITC, those two dealers are M/s T.D. & Co., and M/s Pooja Trading Corporation. On these grounds it is pray that to allow the cross objection and set-aside the order of the FAA and confirm the order of AA with regard to the penalty imposed u/s 70(2) of the Act.

5. Perused the records. On account of similar facts and question of law being involved in all these appeals, the same are clubbed together and disposed of by this common judgment. After careful examination of the records, the following points are arise for our consideration:-

**Points for Consideration in STA NO.  
1922 to 1926/2009**

- 1. whether the appellant proves that mere production of tax invoice, payment proof are sufficient to allow the ITC claim and not necessary to furnish***

*details of the vehicle used for transporting the goods and the existence of the selling dealers?*

2. *Whether, the appellant proves that the reassessment order passed u/s 39(1) and imposing penalty u/s 72(2) and interest u/s 36 are not sustainable under the law and facts?*
3. *What Order?*

Points for Consideration in Cross Appeal  
Nos:466 to 470/2015

*1. Whether the appellant proves that the order of FAA setting aside/delete the penalty order u/s 70(2)(a) of the Act passed by the AA is not proper and liable to be set-aside?*

*2. What Order?*

5. Our answer to the above points are as under:-

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STA No. 1922 to 1926/2009  
Cross Appeal Nos.466 to 470/2015

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IN STA NO. 1922 to 1926/2009

*Point No.1:- In the negative*

*Point No.2:- In the negative*

*Point No.3:- As per final order for the following:-*

IN Cross Appeal Nos:466 to 470/2015

*Point No.1:- In the Affirmative.*

*Point No.2:- As per final order for the following:-*

REASONS

6. Point NO.1 & 2 of STA 1922 to 1926/2009 and Point NO.1 in Cross Appeal Nos: 466 to 470/2015 : Since these points are inter related and also to avoid repetition of facts and reasoning's, we took them in common for discussion.

7. The learned counsel for the appellant has advanced his arguments stating that he is a registered dealers and he made purchases from the registered dealers, who



have issued valid tax invoices. Further argued that he maintain the accounts and submitted his returns Form VAT 100. In support of his ITC claim, he produced the tax invoices and proof of payments made to the selling dealers through cheques, inspite of it his claim was rejected. Further argued that all the purchases and sales were of local, thus there is no any such rule that details of the vehicles are to be provided to prove the transportation of goods, as the purchases and sales were of small quantity and transportation was not passing through check post. The appellant need not observe/monitor the vehicle number written in the invoice with regard to transportation of goods at the time of taking delivery. Even it is contrary to law in force, that the selling dealers not filed returns and not remitted the tax collected by them is not the ground to reject his ITC claim. Further argued that since the purchases and sales were of small in quantity, used to transport in auto rickshaw and such other vehicles, on these grounds his ITC claim cannot be rejected in support of his argument he relied upon the judgments reported in 2013 (77) Kar.LJ .159(SC), (2013)57 VST405(Delhi), (2013)57 VST538(AP), (2012)50 VST179(Mad), (2012)50 VST185(Karn), (2013)60 VST283(Mad), Madras High

