

**GIB/MH/Mahalaxmi Cotton/11-05-2012/HC-43**

**High Court Category :** Input Tax Credit

**State :** Maharashtra

**Order No.:** GIB/MH/Mahalaxmi Cotton/11-05-2012/HC-43

**Name of Entry :**

Mahalaxmi Cotton Ginning

**Date :** 11-05-2012

**Breif Issue :**

As per provisions of MVAT every dealer is liable to pay tax on a sale transaction with a purchasing dealer. The dealer is also entitled to claim by way of a set off under Section 48 the tax paid on his purchases as ITC. Section 86 prescribes a tax invoice which is issued, by a selling dealer, indicating the amount of tax recovered. The tax invoice has to contain a certification that the registration of the selling dealer under the MVAT Act, 2002 is in force on the date on which the sale of the goods specified in the tax invoice took place; that the transaction of sale has been effected by the selling dealer and shall be accounted for in the turnover of sales while filing the return and that the due tax, if any, payable on the sale has been paid or shall be paid

As per section 48 of the MVAT Act :

*For the removal of doubt it is hereby declared that, **in no case the amount of setoff or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid,** if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the the claimant dealer on the purchase of the said goods effected by him.*

In this case the Petitioner was partnership firm and a dealer registered under the MVAT Act, 2002, carries on business as a reseller in cotton bales. For 2009-10, the Petitioner filed its returns and, based on the purchases effected by it, claimed Input Tax Credit (ITC) by way of a set off under Section 48. The Petitioner was called upon to submit ledger copies and proof of the filing of returns by the dealer in those cases where the data was unmatched. ITC was not allowed for mismatched data and claim of refund reduced accordingly.

Petitioner challenged to the constitutional validity of the provisions of Section 48(5) is on the ground that it violates Article 14 of the Constitution.

**Decision of Advance Ruling Authority :**

HC did not find any merit in the challenge to the provisions of Section 48(5) of the MVAT Act, 2002 and upheld the constitutionality of the provision of Section 48(5). Section 48(1)(a) uses the expression

“paid” while Section 48(5) uses the expression “actually paid”. The Court cannot rewrite the provisions of the statute. When a provision of law is constitutional, no question of reading down the provision would arise. HC held that the right to obtain a set off is a right conferred by statute and the legislature while recognizing an entitlement to a set off in certain circumstances is lawfully entitled to prescribe the conditions subject to which a set off can be obtained. If the legislature, as in the present case, prescribes that a set off should be granted only to the extent to which tax has been deposited in the treasury on the purchase of goods, it is within a reasonable exercise of its legislative power in so mandating. This does not offend Article 14. A plea of hardship cannot result in the invalidation of a statutory provision in a fiscal enactment which is otherwise lawful.