3 SCOB [2015] HCD 108

HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 3203 of 2004

City Vegetable Oil Mils Ltd.
…... Petitioner.

-Versus-

Commissioner, Customs, Excise & VAT (Dhaka South), Segunbagicha, P.S.-Ramna, Dhaka and others
….. . Respondents

WRIT PETITION NO. 3205 of 2004

Asia Pacific Refinery Ltd.
…... Petitioner.

-Versus-

Commissioner, Customs, Excise & VAT (Dhaka South), Segunbagicha, P.S.-Ramna, Dhaka and others
….. . Respondents

Mr. Md. Mizanul Haque with
Mr. Hasan Rajib Prodhan, Advocates
..For the petitioner in both writ petitions.

Ms. Israt Jahan, D.A.G. with
Ms. Shuchira Hossain, A.A.G. with
Ms. Nurun Nahar, A.A.G
….For the Government in both writ petitions.

Heard on: 16.08.2015 and 26.08.2015.
Judgment on: 30.08.2015.

Present:
Mr. Justice Sheikh Hassan Arif
And
Mr. Justice J.N. Deb Choudhury

Value Added Tax Act, 1991
Section 9:

Since the admitted allegation against the petitioners is that in spite of the increase of price of the raw materials as reflected from the concerned bills of entries and assessment orders thereon, the petitioners did not make any corresponding increase in the declared price of the finished products and since such circumstance was not evidently mentioned under any clauses from Clauses-'Ka' to 'Ta' under sub-section (1) of Section 9, we do not find as to how the directions of the concerned officers for readjusting the current account register of the petitioner, or for depositing certain amount through treasury challan, was amenable to the alterative remedy of written objection in view of the provisions under sub-section (2ka) of Section 9. ...(Para 11)

Value Added Tax Act, 1991
Section 9

And
Clause-Gha of Rule 22(1) of the VAT Rules, 1991:

Provisions under sub-section (2) of Section 9 provides that if someone takes rebate in the prohibited circumstances mentioned under sub-section (1), such rebate can be rejected by the concerned officer, who may also direct such person to do necessary adjustment in the current account register, namely Mushak-18, as required to be maintained in view of the provisions under Clause-Gha of Rule 22(1) of the VAT Rules, 1991. This sub-section (2) of Section 9 speaks about only for issuance of direction, not for direct action of adjustment in the current account register. ...(Para 12)

Judgment

SHEIKH HASSAN ARIF, J:

1. Since the questions of law and facts involved in the aforesaid two writ petitions are almost same, they have been taken up together for hearing, and are now being disposed of by this single judgment.

2. **In Writ Petition No. 3203 of 2004**, Rule Nisi was issued asking the respondents to show cause as to why the demand notices issued by respondent no.2, vide nathi no. 4/VAT/Oil(3)91/Part-1/00/833 dated 27.05.2004, for Tk. 22,80,974.00, and vide nathi No. 4/VAT/Oil(3)91/Part-1/00/917 dated 06.06.2004 directing the petitioner to deposit VAT for an amount of Tk.35,41,498.66 through treasury challan or deduct the amounts from the current account register of the petitioner, and, at the same time, deducting the said amounts from the current account register of the petitioner on 30.05.2004 and 07.06.2004, (Annexures-C & D) should not be declared to be without lawful authority and are of no legal effect.

3. **In Writ Petition No. 3205 of 2004**, Rule Nisi was issued calling upon the respondents to show cause as to why the demand notice vide Nathi No.4(6)7/Musuk/Edible Oil/2000/940 dated 08.06.2004 (Annexure C) issued by respondent No.2 directing the petitioner to adjust the current account register, or deposit Tk. 52,93,805.18 through treasury challan, should not be declared to be without lawful authority and is of no legal effect.

4. **Back ground facts in Writ Petition No. 3203 of 2004:**
The petitioner, in this writ petition, is a private limited company and is engaged in the business of producing Edible Oil in the industry located at North Rupshi, Rupgonj, Narayangonj, having VAT Registration Number under the concerned VAT authority being Registration No.9271000384. The finished products of the petitioner's industry is 'Banshpathi', which is a special Type of vegetable oil. In the course of its business, the petitioner, in order to make payment of VAT, submitted value declaration on 17.12.2002 in respect of its product proposing value of per tin produced oil of 16 Kgs at Tk. 505.73 and Tk. 481.60 per cartoon having 16 Kgs of oil therein. Accordingly, the concerned Assistant Commissioner, Narsingdi Division, approved the value of the petitioner's finished product on 04.01.2003 at Tk. 573.00 per tin and Tk. 549.00 per cartoon. Thereupon, while the petitioner was paying VAT, the Superintendent of Rupgonj Circle, by letter vide Nathi No. 4/VAT/Oil(3)91/Part-1/00/833 dated 27.05.2004 informed the petitioner that as per report dated 26.05.2004 submitted by the Area VAT Officer of 'A' Circle, the petitioner had taken excess rebate of Tk. 22,40,978.00 in respect of a period from 02.09.2003 to 24.05.2004 on

account of raw materials, and, by the same letter, directed the petitioner to adjust the said amount in it's current account register. Again, on 05.05.2004, the same Superintendent, vide Nathi No. 4/VAT/Oil(3)91/Part-1/00/917, informed the petitioner that the inquiry team had detected that the petitioner took excess rebate of Tk. 35,41,498.66 in respect of a period from July, 2002 to August, 2003 on account of raw materials and, accordingly, directed the petitioner to adjust the said amount in the current account registrar. Thereafter, on 31.05.2004, the current account register of the petitioner was directly adjusted by deducting the said amount of Tk. 22,40,978.00 by making a reference to the aforesaid Nathi dated 27.05.2004, and on 07.06.2004, a further amount of Tk. 35,41,498.66 was also directly deducted in the current account register by making a reference to the aforesaid Nathi dated 06.06.2003. The above actions direct adjustments were also authenticated by the Superintendent of Customs concerned. Being aggrieved by such demands and actions, the petitioner served a notice demanding justice dated 12.06.2004, whereupon the respondent no. 2 informed the petitioner that the petitioner had alternative remedy against such actions under Section 9(2ka) and (2Kha) of the VAT Act, 1991. Thereafter, getting no positive response, the petitioner moved this Court and obtained the aforesaid Rule.

5. **Back ground facts in Writ Petition No. 3205 of 2004**

The petitioner in this writ petition is also a private limited company and engaged in the production of Edible Oil in the industry located at North Rupshi, Rupgonj, Narayangonj having VAT Registration No. 9271006734. The petitioner produces shortening, which is a special type of vegetable oil. In the course of usual business, the petitioner, on 13.08.20036, declared value of its product at Tk. 524/52 per cartoon containing16 Kgs therein and the said value declared by the petitioner was approved by the concerned Assistant Commissioner on 30.08.2003 fixing the value at Tk. 556.52 per cartoon. Accordingly, while the petitioner was paying VAT in accordance with law, it received demand notice from respondent no. 2 for Tk. 52,93,803.18 vide Nathi No. 4(6)7/Musuk/Edible Oil/2000/940 dated 08.06.2004 with a direction to pay the said amount through Treasury Challan, or deduct the amount in the current account register, on the allegation that it had taken excess rebate. The petitioner, thereupon, gave notice demanding justice on 12.06.2004 requesting cancellation/withdrawal of such demand, whereupon the respondent no.2, vide reply dated 14.06.2004, informed the petitioner that it had alternative remedy under Section 9(2Ka) and (2Kha) of the VAT Act, 1991. Being aggrieved by such action, the petitioner moved this Court and obtained the aforesaid Rule.

6. The Rules are opposed by respondent No. 4 by filing affidavit-in-opposition.

7. **Submissions:**

Mr. Md. Mizanul Haque Chowdhury, learned advocate appearing for the petitioners in both the writ petitions, submits that the main contention of the respondent is that the petitioner took excess rebate for the period mentioned in the notices by not making a fresh declaration of the increased value of the product followed by approval by the concerned officer after increase of the price of raw materials during the said period, though petitioner took rebate at such increased price of the raw materials under section 9 the VAT Act 1991. This being so, according to him, the respondents acted without jurisdiction in that in such a situation the respondent can only act through fixation of base-value under Rule 3 of the VAT Rules, 1991 and upon making demand in view of Section 55 of the VAT Act, 1991. Mr. Chowdhury further argues that only in two situations under the VAT Act, the current account

register of an individual or establishment may be directly adjusted by deducting certain amount therein by the concerned Officers, e.g., in cases falling under Section 9(1) and in cases falling under Section 56, for realization of unpaid VAT. However, according to him, the case of the petitioners do not fall under any of the categories either under Section 9(1) or under Section 56. Therefore, he submits, neither the petitioner had any alternative remedy in view of the provisions under sub-section (2Ka) of Section 9 nor it had any remedy to prefer any appeal against any demand under Section 55 as the demand made was not a demand under Section 55 after exhausting the procedures of fixing the base value in view of the provisions under Rule 3 of the VAT Rules, 1991. Therefore, according to the learned advocate, since the respondents acted without jurisdiction leaving the petitioner with no effications alternative remedy, this Court can interfere into such actions under writ jurisdiction.

8. As against this, Ms. Israt Jahan, learned Deputy Attorney General representing VAT authority, submits that since the petitioners took excess rebate, they did have alternative remedy to file written objection before the higher officials in view of the provisions under sub-section (2Ka) of Section 9 and as such the aforesaid writ petitions against adjustment of current account register by deducting certain amount therein by the concerned Vat officers or against direction to do such adjustment are not maintainable. Learned D.A.G. submits that the position of law on this point has already been settled by this Court in two writ petitions, namely in **Writ Petition Nos. 3261 of 2004** and **8525 of 2008**, wherein their Lordships held that the writ petitions were not maintainable against the actions of adjustment of current account register done by the VAT Officers under Section 9(2) of the VAT Act, 1991. In this regard, she has also drawn our attention to a general order of the National Board of Revenue (NBR), being General Order No. 48/Mushok/2010 dated 14.10.2000, wherein it has been ordered by the NBR that excess rebate taken in violation Section 9(1) can be rejected and adjusted by the concerned Superintendent of VAT of the concerned circle by adjusting the same (Mushok-18) upon visiting the production place or establishment of the concerned VAT payer, and that if the VAT payer is aggrieved by such action, he has alternative remedy of filing written objection before the higher VAT officer. According to her, relying on this general order, a Division Bench of this Court in Writ Petition No. 3261 of 2004, discharged the Rule holding that the writ petition was not maintainable.

9. **Deliberations of the Court:**

Since the issue of maintainability of the instant writ petitions has been raised very seriously by the respondent, the same is taken up first. Before starting, relevant portions of Section 9 of VAT Act, 1991 are quoted below:-

৯। **কর রেয়াত**। **(১)** করযোগ্য পণ্যের সরবরাহকারী, ব্যবসায়ী বা করযোগ্য সেবা প্রদানকারী প্রতি কর মেয়াদে তৎকর্তৃক সরবাহকৃত পণ্য বা প্রদত্ত সেবার উপর প্রদেয় উৎপাদন করের (output tax) বিপরীতে, **নিম্নবর্ণিত ক্ষেত্র ব্যতীত,** উপকরণ কর রেয়াত গ্রহণ করিতে পারিবেন, যথাঃ

(ক) অব্যহতি প্রাপ্ত পণ্য উৎপাদনে ব্যবহৃত উপকরণের উপর পরিশোধিত মূল্য সংযোজন কর;

(খ) টার্ণওভার করের আওতাভূক্ত করদাতার নিকট হইতে সংগৃহীত উপকরণের উপর পরিশোধিত টার্ণওভার কর;

(গ) পণ্য উৎপাদন বা সেবাপ্রদানে ব্যবহৃত উপকরণের উপর পরিশোধিত সম্পূরক শুল্ক;

(ঘ) প্রথমবার ব্যতীত অন্যকোনো দফায় পুনঃব্যবহারযোগ্য মোড়কের উপর পরিশোধিত মূল্য সংযোজন কর;

(ঙ) করযোগ্য পণ্য উৎপাদন বা করযোগ্য সেবাপ্রদানের সহিত সরাসরি সম্পৃক্ত হইলেও কোনো দালান-কোঠা বা অবকাঠামো বা স্হাপনা নির্মাণ, সুষমীকরণ, আধুনিকীকরণ, [প্রতিস্হাপন, সম্প্রসারণ,] পুনঃসংস্কারকরণ ও মোরামতকরণ, সকল প্রকার আসবাবপত্র, ষ্টেশনারী দ্রব্যাদি,

এয়ারকন্ডিশনার, ফ্যান, আলোক সরঞ্জাম, জেনারেটর ইত্যাদি ক্রয় বা মেরামতকরণ, স্হাপত্য পরিকল্পনা ও নকশা ইত্যাদির সহিত সংশ্লিষ্ট পণ্য এবং সেবার উপর পরিশোধিত মূল্য সংযোজন কর;

(চ) করযোগ্য পণ্য উৎপাদন বা সরবারহ বা করযোগ্য সেবাপ্রদানের সহিত সরাসরি সম্পৃক্ত এবং সম্পৃক্ত নহে এইরুপ স্হান বা স্হাপনায় ব্যক্তিগত এবং ব্যবসায়ে যৌথভাবে ব্যবহৃত টেলিফোন, টেলিপ্রিন্টার, ফ্যাক্স, ইন্টারনেট, ফ্রেইট ফরোয়ার্ডার্স, ক্লিয়ারিং ও ফরোয়ার্ডিং এজেন্ট, ওয়াসা, বিমা অডিট ও একাউন্টিং ফার্ম, যোগানদার, সিকিউরিটি সার্ভিসেস, আইন পরামর্শক, পরিবহন ঠিকাদার ঋণপত্র সেবা ও বিদ্যুৎ বিতরণ সেবার উপর পরিশোধিত মূল্য সংযোজন করের ষাট শতাংশের অতিরিক্ত মূল্য সংযোজন কর;

(ছ) ভ্রমন, আপ্যায়ন, কর্মচারীর কল্যান ও উন্নয়নমূলক কাজের ব্যয়ের বিপরীতে পরিশোধিত মূল্য সংযোজন কর;

[(ছছ) ধারা ৫ এর-

[(অ) উপ-ধারা (২) এ উল্লিখিত পণ্যের করযোগ্য মূল্যভিত্তির মধ্যে অন্তর্ভূক্ত নয় এমন উপকরণের বিপরীতে পরিশোধিত মূল্য সংযোজন কর;

(আ)উপ-ধারা (২) এর দ্বিতীয় শর্তাংশে উল্লিখিত ব্যবসায়ী কর্তৃক ক্রয়কৃত উপকরণের উপর পরিশোধিত উপকরণ কর;]]

(জ) ধারা ৫ এর উপ-ধারা (৪) এর বিধান অনুযায়ী কোনো নির্দিষ্ট সেবাপ্রদানকারী কতৃক ক্রীত উপকরণের উপর পরিশোধিত মূল্য সংযোজন কর;

[(জজ) ধারা ৫ এর উপ-ধারা (৪ক) এ উল্লিখিত ব্যবসায়ী কর্তৃক ক্রয়কৃত উপকরণের উপর পরিশোধিত উপকরণ কর;]

(ঝ) ধারা ৫ উপ-ধারা (৭) এর বিধান অনুযায়ী নির্ধারিত ট্যারিফ মূল্যের ভিত্তিতে পণ্য সরবরাহকারী কর্তৃক ক্রীত উপকরণের উপর পরিশোধিত মূল্য সংযোজন কর;

(ঞ) নিবন্ধন সংখ্যা, নাম ও ঠিকানা ব্যতীত অন্যকোনো নিবন্ধন সংখ্যা, নাম ও ঠিকানা সম্বলিত বিল অব এন্ট্রি বা চালানপত্রে উল্লিখিত উপকরণ কর; এবং

(ট) অন্যের অধিকারে, দখলে, তত্ত্বাবধানে রক্ষিত পণ্যের উপর পরিশোধিত মূল্য সংযোজন করঃ

[(১ক) মূলধনী যন্ত্রপাতির ক্ষেত্রে উপকরণ কর রেয়াত বিধি দ্বারা নির্ধারিত পদ্ধতিতে গ্রহণ করিতে হইবে।

(২) **<u>উপ-ধারা (১) এ বর্ণিত ক্ষেত্রসমূহে</u>** <u>উপকরণ কর রেয়াত গ্রহরের অধিকার নাথাকা সত্ত্বেও কোনো ব্যক্তি উক্তরুপ কর রেয়াত গ্রহণ করিলে</u> সংশ্লিষ্ট কর্মকর্তা, ধারা ৩৭ এ যাহা কিছুই থাকুক না কেন, <u>গৃহীত রেয়াত নাকচ করিয়া চলতি হিসাব বা দাখিলপত্রে প্রয়োজনীয় সমন্বয় সাধনের</u> **<u>নির্দেশ দিতে পারিবেন।</u>**]

[(২ক) এই <u>আইনের অন্যান্য বিধানে যাহা কিছুই থাকুক না কেন</u>, উপ-ধারা (২) এর অধীনে <u>সংশ্লিষ্ট কর্মকর্তা কর্তৃক</u> **<u>প্রদত্ত নির্দেশের ফলে</u>** <u>কোনো ব্যক্তি সংক্ষুদ্ধ হইলে, তিনি</u> **<u>উক্ত নির্দেশের</u>** বিরুদ্ধে উক্ত সংশ্লিষ্ট কর্মকর্তার উর্ধ্বতন মূল্য সংযোজন কর কর্মকর্তার নিকট <u>লিখিত আপত্তি উথথাপন করিতে পারিবেন।</u>

(২খ) <u>উপ-ধারা (২ক) এর অধীন কোনো লিখিত আপত্তি দাখিল করা হইলে</u>, উক্ত কর্মকর্তা লিখিত আপত্তি দাখিলের তারিখ হইতে সাত কার্যদিবসের মধ্যে আপত্তি দাখিলকারী ব্যক্তিকে শুননির যুক্তিসংগত সুযোগ প্রদানপূর্বক, উহা নিষ্পত্তি করিবেন এবং উক্ত কর্মকর্তার অনুরুপ **<u>কোনো আদেশ চুড়ান্ত হইবে।</u>**]

(3)--

(4) --

(Underlines supplied)

10. Thus, it appears from Section 9 of the VAT Act, 1991, that the supplier of goods, businessmen and providers of service are entitled to rebate on raw materials <u>except in cases mentioned under different sub-clauses of sub-section (1) of Section 9</u>. At the relevant time,

the prohibited circumstances in which such suppliers, businessmen or service providers would not get rebate were mentioned under Clauses-'Ka' to 'Ta' of sub-section (1). Sub-section (2) of Section 9 further provides that if anyone takes rebate under any of such prohibited circumstances mentioned under sub-section (1), where he does not have right to take such rebate, the concerned officer may reject such rebate and direct readjustment of the current account register in addition to taking action under Section 37. Again, while sub-section (2ka) of Section 9 provides that if the said person is aggrieved by such direction of the VAT officer, he is entitled to prefer written objection before the higher officer, sub-section (2kha) provides that the said higher officer is obliged to dispose of such written objection within seven working days upon giving opportunity of hearing to the said person and that the order disposing of such objection shall be the final order (B-cn Q¨s¡¿¹ qC-h).

11. Keeping the above contemplations of the Legislature, let us now examine the instant cases. It appears that the allegation in the present case, namely the allegation of not revising the base value of the finished products even in case of increase of the price of raw materials, evidently, does not come under any of the prohibited circumstances mentioned in Clauses-'Ka' to 'Ta' of sub-section (1) of Section 9. Which means, the Legislature, at the relevant time, did not contemplate such a situation of taking excess rebate by Vat prayer due to increase of price of the raw materials without revised price declaration being approved upon correspondingly increasing the price of the finished goods. Learned DAG has also failed to point out as to under what Clause of sub-section (1) of Section 9, the allegations labelled against the petitioners fall. Since the admitted allegation against the petitioners is that in spite of the increase of price of the raw materials as reflected from the concerned bills of entries and assessment orders thereon, the petitioners did not make any corresponding increase in the declared price of the finished products and since such circumstance was not evidently mentioned under any clauses from Clauses-'Ka' to 'Ta' under sub-section (1) of Section 9, we do not find as to how the directions of the concerned officers for readjusting the current account register of the petitioner, or for depositing certain amount through treasury challan, was amenable to the alterative remedy of written objection in view of the provisions under sub-section (2ka) of Section 9.

12. Provisions under sub-section (2) of Section 9 provides that if someone takes rebate in the prohibited circumstances mentioned under sub-section (1), such rebate can be rejected by the concerned officer, who may also direct such person to do necessary adjustment in the current account register, namely Mushak-18, as required to be maintained in view of the provisions under Clause-Gha of Rule 22(1) of the VAT Rules, 1991. This sub-section (2) of Section 9 speaks about only for issuance of direction, not for direct action of adjustment in the current account register. Further, according to sub-section (2Ka), if such person is aggrieved by any such direction of the concerned officer given under sub-Section (2), he may file a written objection against such direction before the higher Vat officer. However, as stated above, since the allegations against the petitioners in both the writ petitions do not fall under any of the prohibited circumstances mentioned under sub-section (1), it cannot be said that the petitioners took rebate in any of the said prohibited circumstances. This follows that, the impugned directions were not authorized by law and that the petitioners were not entitled to file any written objection against such directions. Since the Legislature has specifically provided the prohibited circumstances under which, if rebate is taken, the concerned officers can reject such rebate and issue direction under sub-section (2) to do necessary adjustment in the current account register, and the person against whom such direction has been given can file written objection against such direction before the higher officer, we do not see any scope, at the relevant time, for the petitioners to prefer any written objection before the higher

officer either against the impugned directions in both the writ petitions or against the direct actions of the concerned officers adjusting the current account register in Writ Petition No. 3203 of 2004. It further follows that since the direct actions of adjustment, as in Writ Petition No. 3203 of 2004, have not been authorized by the provisions under sub-section (2) of Section 9. Even if, for arguments' sake, the allegations against the petitioners fell in the prohibited circumstances mentioned under sub-section (1), the petitioner in Writ Petition No. 3203 of 2004 would not be able to prefer written objections before the higher vat officer inasmuch as that such avenue of filing written objections was only available against the directions but not against the direct actions of adjustment of current account register. Therefore, at the relevant time, the petitioners in fact did not have any efficacious alternative remedy. This being so, it is also not fathomable as to how the General Order No. 48/Mushak/2010 dated 14.12.2010 of NBR, as referred to by the learned DAG, can stand the test of law in so far as the same concerns the direct action of adjustment in the current account register.

13. In this regard, we have also examined the decisions of this Court as referred to by the learned DAG, namely the judgments in unreported Writ Petition Nos. 3261 of 2004 and 8525 of 2008. In Writ Petition No.3261 of 2004 (**Squire Toiletries vs. NBR**), the facts were different. In that case, the allegation against the petitioner was covered under Clause-(Neo) of sub-section (1) of Section 9. Considering that aspect, their Lordships in that writ petition concluded that the petitioners did not have entitlement to avail writ jurisdiction in view of the availability of the alternative remedy. On the other hand, the issue as regards the said officers authority to do direct adjustment under sub-section (2) of Section 9 was not raised or considered in that case. Again, since the judgment in Writ Petition No. 8525 of 2008 (**Aftab Automobiles Limited Case)** does not disclose as to under what prohibited circumstances of Clauses-'Ka' to 'Ta' of sub-section (1) of Section 9 the allegations in that case fell, we are not in a position to extract the relevant ratio from that decision to apply the same in the facts and circumstances of the present case. This being so, we are of the view that, the said decisions, though declared correct position of law, are not applicable in the facts and circumstances of the present cases.

14. Again, the fact that the allegations against the petitioner do not fall under any of the prohibited circumstances of sub-section (1) is further reflected in the amendment of Section 9 by inserting sub-clause-(AA) under Clause-(RR) of sub-section (1) of Section 9 by virtue of Finance Act, 2013, wherein the increase of price of raw materials beyond 7.5% and evasion of VAT by not reflecting the said increase in the declared price of the finished goods were inserted as one of the prohibited circumstances to which the concerned person is not entitled to rebate. However, at the relevant time when the impugned directions were given, namely in 2004, no such provisions of sub-clause (AA) was there under sub-section (1) of Section 9. In view of above position, we hold that the writ petitions are maintainable.

15. The admitted position is that the price of the raw materials, which were used by the petitioners in the production of the finished goods, were increased during the period as mentioned in the impugned notices. It is also true that the petitioners were required to make reflection of such increase of price of raw materials in the base value of the finished goods to be declared or revised by the petitioner followed by approval by the concerned officers in view of the provision under Rule-3 of VAT Rules, 1991. However, in the instant cases, the allegation is that the petitioner did not do such corresponding increase in the price declaration or that no revised price declarations was made. In such a situation, the question is whether the concerned officer can issue direction on the delinquent person for adjustment of current

account register or whether the officer can himself do such direct readjustment in the current account register by visiting the production site or establishment of such person. After examining the relevant provisions of law, it appears that the respondents can probably take such action only in one situation under Section 56, namely in the process of realization of demand under Section 56 in view of Clause (Ka) of sub-section (1) of Section 56. However, in exercising such power under Section 56, the concerned officer must proceed after exhausting the demand procedure as envisaged under Section 55 of the VAT Act followed by an adjudication order. On the other hand, under sub-section (2) of Section 9, the situations under which the respondents can give direction for adjusting the current account register must be covered by the prohibited circumstances mentioned in Clauses-'Ka' to 'Ta' of sub-section (1) of Section 9, which was totally absent in the facts and circumstances of the present cases. Since, in the present cases, the VAT officer admittedly acted under Section 9(2) and not under Section 56, the impugned directions and/or actions of the concerned officers were without jurisdiction as the prerequisite facts for exercising such jurisdiction as contemplated under Clauses-'Ka' to 'Ta' of sub-section (1) of Section 9 were totally absent. Therefore, we can safely hold that the impugned directions and/or actions were without jurisdiction.

16. Regard being had to the above facts and circumstances of the case, we are of the view that the Rules have substances and as such the same should be made absolute.

17. In the result, the Rules are made absolute. The impugned directions, to do adjustment etc. and/or actions of direct adjustment, in current account registers of the petitioners are thus, declared to be without lawful authority and are of no legal effect. Accordingly, such direct adjustments are knocked down. However, the respondents are at liberty to proceed in accordance with the provisions under Section 5 of the VAT Act, 1991 read with Rule-3 of the VAT Rules, 1991 in order to determine and/or approve the revised base value of the concerned products without any prejudice to the petitioners to take recourse to relevant provisions of law.

18. Communicate this.