IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Reserved on: 05.08.2026
Pronounced on: 13.10.2026
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Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced: ***Full Judgment***

1. ***VATAP-118-2017 (O&M)***

M/S FERTICHEM COTSPIN LTD ***..APPELLANT***

VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

2. ***VATAP-117-2017 (O&M)***

M/S FERTICHEM COTSPIN LTD ***..APPELLANT***

VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

3. ***VATAP-119-2017 (O&M)***

M/S GROSPINZ FAB LTD ***..APPELLANT***

VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

4. ***VATAP-122-2017 (O&M)***

M/S T C TERRYTEX LTD ***..APPELLANT***

VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

5. ***VATAP-124-2017 (O&M)***

M/S MODERN RICE MILLS GHANAUR ***..APPELLANT***

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VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

6. ***VATAP-60-2018 (O&M)***

M/S LOUIS DREYFUS COMPANY INDIA PVT LTD ***..APPELLANT***

VERSUS

STATE OF PUNJAB AND ANOTHER ***....RESPONDENTS***

CORAM:- HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ROHIT KAPOOR

Present: Mr. Sandeep Goyal, Senior Advocate assisted by
Mr. Rishab Singla, Advocate and
Ms. Aakriti, Advocate
for the appellants (in all appeals).

Mr. Saurabh Kapoor, Addl. AG, Punjab
Mr. R. S. Pandher, Addl. AG, Punjab.

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ASHWANI KUMAR MISHRA, C.J.

1. These Value Added Tax (***VAT***) appeals involve a common question concerning the interplay between the general entitlement to Input Tax Credit (***ITC***) under Section 13 of the Punjab Value Added Tax Act, 2005 (for short, the '***Act of 2005***') and the specific restriction contained in Section 19(5), particularly in cases where goods specified in Schedule 'H' are purchased within the State, used in manufacture, and the resultant goods are sold in the course of inter-State trade or commerce. These appeals arise from orders of the of the Punjab VAT Tribunal dated 02.06.2017, and though involving common question of law, they arise in different factual and statutory settings, which require consideration. The facts are noticed first from VATAP No.118 of 2017.

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2. The distinct features in other cases shall be dealt with later in this judgment.

Facts

3. The appellants are engaged in the manufacture of 100% cotton yarn. For this purpose, it procures ginned and pressed cotton, a commodity specified in Schedule 'H' of the Act of 2005, both from within the State of Punjab, from registered selling dealers who charge VAT/sales tax on the sale in the ordinary course, and from outside the State, on payment of entry tax under the Punjab Tax on Entry of Goods into Local Areas Act, 2000 (for short, '***Act of 2000***'). The cotton so purchased is consumed captively in the manufacture of cotton yarn, which is thereafter sold by the appellant in the course of inter-State trade and commerce, Central Sales Tax being charged on such sales. For the Assessment Year 2009-10, the appellant claimed ITC on the VAT paid on its local purchases under Section 13 of the Act of 2005, and of the entry tax paid on its inter-State purchases under Section 13-A of the Act of 2005, contending that it had, at no stage, paid any 'purchase tax' under Section 19 of the Act of 2005.

Proceedings before the Assessing Authority

4. On scrutiny of the returns, the Assessing Authority took the view that since the appellant had sold, in the course of inter-State trade, yarn manufactured out of cotton, a Schedule 'H' commodity, the ITC available to it stood restricted under Section 19(5) of the Act of 2005 to the extent of the Central Sales Tax chargeable on such inter-State sale. The appellant's plea that it had paid VAT, and not purchase tax, on its

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local purchases, and was consequently entitled to ITC in full under Section 13 of the Act of 2005, was not accepted; entry tax paid on the inter-State purchases was likewise held to be governed by Section 19(5), on the ground that the underlying goods fell within Schedule 'H'. By order dated 24.10.2013 (Annexure A-3), the Assessing Authority determined total output tax of Rs. 51,01,602/- under the Act, reversed ITC of Rs. 36,62,329/- with reference to Section 19(5), allowed ITC of Rs. 14,23,774/-, and raised a total demand of Rs. 36,87,828/-, inclusive of penalty levied under Section 60(1) of the Act, under the PVAT Act, together with a further demand of Rs. 66,400/- under the Central Sales Tax Act, 1956 (for short, '***Act of 1956***').

Proceedings before the First Appellate Authority

5. The appellant's first appeal against the said order, being VAT Appeal No. 227/2013-14, was dismissed by the DETC (Appeals), Patiala Division, Patiala, vide order dated 20.03.2015 (Annexure A-5). The DETC held that Section 13 is a general provision governing ITC, whereas Section 19(5) of the Act of 2005 is a specific statutory provision governing entitlement to ITC on Schedule 'H' items, and that, being specific, Section 19(5) of the Act of 2005 is not displaced by, nor in conflict with, Section 13. The appellant's contention that Section 19(5) of the Act of 2005 applies only where purchase tax and not VAT has been paid was rejected, Section 19(5) of the Act of 2005 being read as a special provision governing all ITC accruable on Schedule 'H' goods irrespective of the nature of the tax paid. It was further held that entry tax could not be treated as 'advance tax', since Section 6(8) of the Act came into force only

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with effect from 12.08.2011, subsequent to the assessment year in question. The appeal was accordingly dismissed as being without merit, and the assessment order was upheld in toto.

Proceedings before the Tribunal

6. The appellant's second appeal, being Appeal No. 357 of 2015, was decided by the Tribunal vide common order dated 02.06.2017 (Annexure A-8), on the ground that a common question of law arose in all five appeals. Insofar as the present Appeal No. 357 of 2015 is concerned, the Tribunal reproduced, in substance, the reasoning of the DETC holding that Section 13 of the Act of 2005 is a general provision, whereas Section 19(5) is a specific provision governing Schedule 'H' items and the two are not in conflict; that the appellant's argument confining Section 19(5) to purchase tax is not acceptable; and that entry tax cannot be equated with advance tax since Section 6(8) of the Act of 2005 took effect only from 12.08.2011. Recording that no other argument had been advanced, the Tribunal dismissed the appeal, finding no merit therein.

7. It may be noted that the Tribunal's discussion in relation to Appeal No.91 of 2012, a separate matter concerning a different assessee, and a refund/reversal of ITC on cotton itself for the period 28.03.2008 to 31.03.2008 records a finding that ITC on cotton used in the manufacture of yarn sold inter-State stands restricted. The appellant contends that this observation, arrived at in a factually distinct matter, together with the composite treatment of all five appeals in a common order, does not adequately address the specific fact- situation of the present case, and

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further points out an alleged mis-statement in the impugned order to the effect that ITC was reversed on the purchase of yarn, whereas the reversal was, in fact, on the purchase of cotton.

8. The determination of the principal issue turns upon the construction of Sections 13 and 19 of the Act of 2005 itself. Section 13 of the Act, provides as under:-

> *(1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:*
>
> *Provided that such goods are for sale in the State or in the course of inter-State trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:*
>
> *Provided further that a taxable person shall be entitled to partial input tax credit in any other event, as may be provided in this section in such manner and subject to such conditions as may be prescribed:*
>
> *Provided further that if, purchases are used partially for the purposes specified in this sub-section and the taxable person is unable to identify the goods used for such purposes, then the input tax credit shall be allowed proportionate to the extent, these are used for such purposes, in the prescribed manner:*
>
> *Provided further that input tax credit in respect of purchase tax paid or payable by a taxable person*

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under section 19, shall be allowed subject to the conditions laid therein.

(2) Input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four percent on purchase of goods

(a) sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of territory of India; and

(b) used in manufacturing or in packing of taxable goods sent outside the State other than by way of sale in the course of inter State trade or commerce or in the course of export out of the territory of India.

(3) Where a taxable person sends any goods as such or after being partially processed for further processing on job work basis, he shall debit the ITC by four percent of the value of such goods. If such goods after processing are received back by such person, the ITC debited at the time of despatch, shall be restored. Such person shall, however, be required to produce proper evidence in the shape of records, challans or memos or any other document evidencing receipt of such goods, whenever asked for.

9. Further, Section 13A of the Act, provides as under:-

"Subject to the provisions of this Act, a taxable person shall by entitled to input tax credit in respect of the tax, paid by him under the Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Punjab Act No. 9 of 2000), if such goods are for sale in the State or in the course of inter-State trade or commerce or in the course of export or for use in the manufacture,

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processing or packaging of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export."

10. Section 13 of the Act, 2005 makes it explicit that entitlement to input tax credit in favour of a taxable person is dependent upon fulfilment of the manner and conditions as are prescribed in respect of input tax of taxable goods, including capital goods, purchased from a taxable person within the State during the tax period.

11. The entitlement is further subject to the four provisos to Section 13(1). First proviso contemplates that input tax shall not be available for input tax credit unless such goods are sold within the State or in the course of inter-State trade or commerce or in the course of export and are used in the manufacturing process or packaging of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export.

12. Second and third proviso are self-explanatory and need not be elaborated any further for determination of issues that arose in this matter.

13. Fourth proviso contemplates that input tax credit in respect of purchase tax paid or payable by a taxable person under Section 19, shall be allowed subject to the conditions laid therein.

14. Sub-Section 2 and 3 further explains the circumstances and the manner in which input tax credit can be claimed by a taxable person. Section 19 of the Act, 2005 which deals with levy of purchase tax, as forming part of Chapter-III, reads as under:-

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19. (1) Notwithstanding anything contained in this Act, there shall be levied VAT on the taxable turnover of purchase of the goods specified in Schedule-H at the rate applicable to such goods as per the Schedules.

(2) The tax shall be leviable on the first purchase of these goods from within the State. In case of Milk, however, first purchase shall be, when purchase is made by a manufacturer of taxable goods: Provided that on subsequent sales of such goods, VAT on sale price shall be leviable as per the provisions of this Act.

(3) Subject to the provisions of this Act, the purchaser of the goods, specified in Schedule-H, shall have to be registered for VAT.

(4) The purchase tax paid by a taxable person, shall not be admissible as input tax credit, unless the goods are sold within the State or are used for manufacture of taxable goods in the State for sale or are sold in the course of inter-State trade or commerce or in the course of export:

Provided that if, purchases are used partially for the purpose of manufacture of taxable goods and partially for the purpose of manufacture of tax free goods, then the purchase tax paid by a person shall be allowed to be treated as input tax credit proportionately, to the extent, the purchases are used for such purposes in the prescribed manner.

(5) Input tax credit, on goods liable to tax under sub-section (1), when sold in the course of inter-State trade or commerce, shall be available only to the extent of Central Sales Tax chargeable under the Central Sales Tax Act, 1956.

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15. Section 19 of the Act, 2005, starts with a non-obstante clause relating to rate of applicable tax on certain goods specified in Schedule-H.

Submissions on behalf of the appellants

16. Mr. Sandeep Goyal, learned Senior Counsel for the appellant(s), made the following submissions:

(i) that the ITC in question is governed by Section 13, and not Section 19, of the Act. Section 19 is a separate, self-contained code governing the levy of purchase tax and the admissibility of ITC thereon, and since the appellant purchased cotton from a registered VAT dealer who himself charged tax on the sale, the transaction is governed by Section 13 alone;

(ii) that Section 19 does not contemplate a situation where cotton is purchased, and yarn the manufactured product, is sold in the course of inter-State trade. On a correct interpretation of Section 19(5), with reference to the flow-chart at Annexure A-7A, ITC cannot be restricted where the raw material purchased is not itself the goods sold inter-State, and the restriction, if at all, would apply only where the very goods purchased are resold as such;

(iii) that the appellant did not, at any stage, pay 'purchase tax' on the purchase of cotton. It paid VAT/sales tax to the registered selling dealer, so that

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Section 19(5) has no application to the facts of the case;

(iv) that entry tax cannot be equated with purchase tax, being merely an advance collection of tax, and Section 19(5) accordingly has no bearing on the ITC claimed under Section 13-A on entry tax paid; and

(v) that, in the alternative, the proviso to Section 19(2) itself contemplates that on a second or subsequent purchase, the ordinary provisions of VAT and not Section 19 shall apply. The appellant's purchase, being from a registered dealer who had himself already suffered tax on the first purchase, was a second purchase, and the ordinary VAT/ITC scheme under Section 13 therefore governs.

Submissions on behalf of the respondents

17. Mr. R.S. Pandher, learned Additional Advocate General, Punjab, appearing for the respondent-State adopting the written submissions filed on record by Sh. Saurabh Kapoor, Additional Advocate General, Punjab, controverted the above submissions and urged:

(i) that Section 13 is a general provision, while Section 19(5) is a specific provision applicable to Schedule 'H' items, and the specific provision is not displaced by the general one, as held concurrently by the DETC and the Tribunal;

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(ii) that while entry tax paid under the Entry Tax Act, 2000, would ordinarily qualify for ITC under Section 13-A, the Fourth Proviso to Section 13(1) excludes Schedule 'H' goods from the general ITC dispensation, so that even entry tax paid on Schedule 'H' goods is governed by Section 19(5), and not by Section 13-A in isolation;

(iii) that Schedule 'H', on its face, makes reference to Section 19, so that all items specified therein including cotton are to be governed by Section 19, to the exclusion of the general provision in Section 13;

(iv) that the statute does not distinguish between 'purchase tax' and other tax paid on the purchase of a Schedule 'H' item for the purpose of Section 19(5). Once any tax is paid on such purchase, the resultant credit is governed exclusively by Section 19(5); and

(v) that, without prejudice to the foregoing, and in any event, the appellant has failed to place on record evidence such as the VAT returns of the selling dealer establishing discharge of tax liability at the first point of sale, so as to bring its case within the proviso to Section 19(2).

Cause

18. In substance, the principal question arising for our consideration in this batch of appeals is as to whether ITC claimed under

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Section 13 of the Act of 2005 on purchases on which VAT has been charged is nevertheless subject to the specific restriction contained in Section 19(5) of the Act of 2005, and in particular, whether the position differs depending on the statutory form of Section 19(5) applicable to the relevant period and where Schedule-H goods are used in manufacture and the resultant goods are sold inter-State.

Position in law

19. A perusal of the language employed in Section 13 of the Act of 2005 would clearly indicate that the Section provides for general entitlement to ITC which is subject to such conditions as are prescribed in respect of input tax on taxable goods. The entitlement therefore is not absolute and is subject to specific statutory restrictions.

20. The fourth proviso to Section 13 of the Act of 2005 manifests the legislative intent that ITC in respect of purchase tax paid or payable by a taxable person under Section 19 of the Act of 2005 shall be allowed subject to conditions laid therein.

21. By virtue of Section 13A of the Act of 2005, the ITC is also made admissible in respect of tax paid under the Act of 2000. Taken cumulatively, Section 13 and 13A regulates grant of ITC to a taxable person whether tax paid is VAT or is entry tax paid on the goods purchased within the State of Punjab. Both kinds of tax are to be counted for the purposes of award of ITC.

22. Section 19 starts with a non-obstante clause which would override other provisions including Sections 13 and 13A insofar as Section 19 is applicable.

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23. It further provides for levy of purchase tax on certain goods and has already been reproduced.

24. The provision specifically deals with goods specified in Schedule-H which includes ‘cotton’. Sub-Section (5) of Section 19 restricts the benefit of ITC on goods specified in Schedule-H or the products manufactured therefrom, to the extent of Central Sales Tax chargeable under the Act of 1956. However, the scope of sub-section (5) has to be examined with reference to the statutory language applicable during the relevant period.

25. This aspect assumes significance as an amendment came to be introduced to Section 19(5) of the Act of 2005 w.e.f. 28.03.2008. The language employed in Section 19(5) prior to 28.03.2008 was as under:-

> *The words in brackets substituted for the words "liable to tax under sub-section (1)" w.e.f. 28.03.2008 by Punjab Act No. 14 of 2008 vide Notification No. 15-Leg./2008 dated 28.03.2008 as published in Pb Govt. Gaz.. Extra.. of even date. This substitution extended to Chandigarh w.e.f. 28.05.2009 vide Notification No. GSR 363(E) dated the 28th May. 2009 as published in the Gaz. of India, Extra.. Part II. Sec 3(i). page 3.*

26. Section 13 undoubtedly confers the general entitlement to ITC. That entitlement is not absolute, and is to be read with specific statutory restrictions. Section 19(5) may restrict the extent of ITC where its statutory conditions are satisfied. In the context of the unamended Section 19(5), the applicability of the restriction cannot be determined

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merely by noticing that the goods fall within Schedule 'H'. The threshold question is whether the goods in respect of which ITC is claimed were goods liable to tax under Section 19(1), read with Section 19(2), during the relevant period.

27. The amendment to Section 19(5) which came into effect from 28.03.2008, materially altered the scope of Section 19(5). Under the unamended provision, the restriction was linked to goods liable under Section 19(1). After the amendment, the provision expressly extends to *"goods specified in Schedule H, or products manufactured therefrom, when sold in the course of inter-State trade or commerce".*

28. The Tribunal framed a common question of law, which is the foundation of the common hearing and a common order. That does not however, dispense with the requirement for application of the provision, in terms of the statutory period, goods generating the ITC, source of ITC, and subsequent inter-State transaction, as are to be identified in each appeal.

29. Section 19(2) stipulates that, save as otherwise provided therein, tax under Section 19 is leviable on the first purchase of the specified goods from within the State, while on subsequent sales VAT on the sale price is leviable under the Act. Consequently, in cases governed by the unamended Section 19(5), it becomes necessary to determine whether the particular purchase giving rise to the ITC was the first purchase attracting Section 19(1), or a subsequent purchase falling outside the purchase-tax levy contemplated by Section 19.

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Cases pertaining to period Post-19(5) amendment

30. Unamended Section 19(5) was attracted only where the goods were "liable to tax under sub-section (1)" of Section 19. Section 19(2) made purchase tax leviable on the first purchase within the State and contemplated VAT on subsequent sales.

31. The appellants in the pre-amendment cases contend that where the particular purchase was a subsequent purchase on which VAT was charged, and was therefore not liable to purchase tax under Section 19(1), the restriction in the unamended Section 19(5) would not arise, and the ITC is governed by Section 13.

32. Post amendment however, Section 19(5) expressly covers "*goods specified in Schedule H, or products manufactured therefrom, when sold in the course of inter-State trade or commerce*"; therefore, pleading that payment of VAT or the fact that the purchase was from a subsequent/last dealer does not, by itself, exclude the restriction.

33. The amended provision thus precludes the nature of the purchase-tax liability under Section 19(1) from being the determining consideration. The restriction is attracted by reference to the goods specified in Schedule 'H', or the products manufactured therefrom, where such goods or products are sold in the course of inter-State trade or commerce. The statutory focus, therefore, is on the character of the goods and the subsequent inter-State transaction, rather than merely on whether the tax paid at the stage of purchase was described as VAT or purchase tax.

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34. In VATAP Nos.118 of 2017 and 119 of 2017, cotton, a Schedule ‘H’ commodity, was used in the manufacture of yarn which was thereafter sold in the course of inter-State trade or commerce. The amended provision expressly brings within its scope not only the Schedule ‘H’ goods but also the products manufactured therefrom. Consequently, the contention that the very goods purchased were not themselves sold inter-State cannot, after the amendment, by itself take the transaction outside Section 19(5).

35. The same statutory position would apply where the Schedule ‘H’ goods themselves, or the products manufactured therefrom, are sold in the course of inter-State trade or commerce. The fact that the goods were purchased from a subsequent or “last” dealer on payment of VAT does not, by itself, alter the applicability of the amended provision. The question whether the purchase was a first or subsequent purchase, which assumes significance under the unamended Section 19(5) because of its reference to goods liable to tax under Section 19(1), cannot be imported into the amended provision so as to qualify the express words used therein.

36. VATAP No.124 of 2017 presents the same statutory question in relation to a different commodity. The appellant purchased paddy within the State on payment of VAT, used the paddy in the manufacture of rice and sold the resultant rice in the course of inter-State trade. Paddy is a commodity specified in Schedule ‘H’ and the amended Section 19(5) expressly extends to the products manufactured therefrom. The fact that VAT was paid at the stage of purchase, therefore, does not by itself

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exclude the application of Section 19(5). The challenge in this appeal consequently fails on the same statutory principle, although the factual aspect differs from the cotton-to-yarn cases.

37. VATAP No.122 of 2017, however, requires separate consideration on the factual aspect relevant to the application of the amended provision. The appellant's case, as noticed from the record, is that the ITC which was reversed related to the purchase of yarn. Yarn, unlike cotton or paddy, is not specified in Schedule ‘H’. The amended provision may extend to products manufactured from Schedule ‘H’ goods, but its application must nevertheless be tested with reference to the goods in respect of which the disputed ITC was actually claimed and reversed. The mere fact that a Schedule ‘H’ commodity may have been involved at an earlier stage of the manufacturing process would not, by itself, establish that the ITC in dispute falls within Section 19(5). The relevant purchase giving rise to the disputed ITC, and the basis on which such ITC came to be reversed, would have to be identified before determining whether the amended Section 19(5) is attracted. The appeal would accordingly require consideration on that limited factual aspect.

38. The position emerging from the aforesaid discussion is that, in the post-amendment cases, the appellants cannot avoid the restriction contained in Section 19(5) merely by pointing out that VAT was charged on the purchase or that the goods were purchased from a subsequent or last dealer. Where the ITC-generating goods are specified in Schedule ‘H’, or are products manufactured therefrom, and the statutory requirement of an inter-State sale is satisfied, the restriction operates in

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accordance with the amended provision. The precise goods generating the disputed ITC must, however, be identified in each case in order to appropriately apply the provision.

39. We are accordingly of the view that the stand of the appellants advanced in VATAP Nos.118 of 2017, 119 of 2017 and 124 of 2017 cannot be sustained, and is thus ***dismissed***.

40. So far as VATAP No.122 of 2017 is concerned, the matter is remitted to the Punjab VAT Tribunal for determination of the goods in respect of which the disputed ITC was claimed and reversed and for a consequential decision on the applicability of Section 19(5) in light of the observations made hereinabove.

41. Accordingly, VATAP No.122 of 2017 stands ***disposed of***.

42. In this view of the matter, in cases pertaining to the period post the amendment of 19(5) being VATAP Nos.118/2017, 119/2017, 124/2017, Section 19 of the Act of 2005 will have an overriding effect and the grant of ITC would be subject to Section 19(5) of the Act of 2005.

Cases pertaining to period Pre-amendment: VATAP No. 60 of 2018, VATAP No. 117 of 2017

43. The distinction between the appeals arises from the date of transactions giving rise to the claim of ITC and the nature of purchases in question. So far as appeals i.e., VATAP No.60/2018 and 117/2017 are concerned, the application of Section 19(2) would have to be determined upon consideration of factual aspect of the appellants' purchase being a second purchase.

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44. In VATAP No. 60 of 2018, the appellant specifically raised the question whether purchase tax was leviable only on the first purchase and not on a subsequent purchase of cotton bales, in the context of Section 19(2) of the Act of 2005. The appellant's case was that the cotton bales had been purchased from registered dealers who had themselves purchased the goods from third parties and that the purchase in question was, therefore, a second sale, on which VAT/sale tax, and not purchase tax, was payable. The said appeal concerns the pre-amendment period and the appellant's challenge is thus directly founded upon the distinction between a first and a subsequent purchase under Section 19(2).

45. VATAP No. 117 of 2017, also pertains to the period prior to amendment of Section 19(5). The appellant contends that the goods in question were purchased from the "last dealer" within the State of Punjab, on payment of VAT and without payment of purchase tax under Section 19. The appellant has consequently questioned the applicability of Section 19(5) and claimed entitlement to input tax credit under Section 13. The reference to purchase from the "last dealer" raises the question whether the relevant purchase was a first or a subsequent purchase for the purposes of Section 19(2); however, unlike VATAP No.60 of 2018, the pleading does not itself specifically formulate the transaction as a second purchase. The factual character of the purchase would, therefore, require examination with reference to the relevant transaction and the material on record.

46. If it is found that purchase is a subsequent purchase not liable to purchase tax under Section 19(1) of the Act of 2005, then in such

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circumstances an appropriate factual ascertainment would be required so as to consider the application of Section 19(2) of the Act of 2005 and thereby exclude the applicability of Section 19 altogether.

47. This factual exercise would be conducted by the competent authority with reference to the relevant purchase transactions and the material on record. The authorities would accordingly determine the question of grant of ITC to the appellants, in accordance with law.

48. With these observations, VATAP No.60/2018 and 117/2017 are ***disposed of.***

49. The question of law posed in the main case and the connected appeals are answered accordingly.

50. All pending miscellaneous applications if any shall also stand disposed of.

[ASHWANI KUMAR MISHRA]
CHIEF JUSTICE

[ROHIT KAPOOR]
JUDGE

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1. Whether Speaking/reasoned Yes/No
2. Whether Reportable Yes/No

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