(2018) 05 RAJ CK 0162

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5506, 344, 506, 966, 1020, 1495, 1503, 1781, 1970, 2097, 3115, 3323, 4285, 4377, 5311, 5565, 5613, 5623, 5624, 4292, 6716, 6613 of 2018, 13535, 14768 of 2017

Hindustan Zinc Limited @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 18-05-2018

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(d), 4, 7(1), 7(2), 8(1), 8(3), 8(4), 8(3)(b)
Central Goods and Service Tax Act, 2017 — Section 9, 9(2)

Citation : (2018) 05 RAJ CK 0162

Hon'ble Judges : NIRMALJIT KAUR, J

Bench : Single Bench

Advocate : Ramit Mehta, D.D. Thanvi, Arvind Shrimali, Amit Vyas, Dr. Sachin Acharya, Shridhar Mehta, Manish Shishodia, Neeraj Kumar Jain, Tribhuwan Gupta, Rahul Lakhwani, Saurabh Maheshwari, Tarun Dudia, Abhishek Mehta, Surendra Singh Choudhary

Final Decision : Allowed

Judgement

All the above mentioned writ petitions shall stand decided by this common order as the issue involved is identical.

The present writ petitions are preferred against the action of the respondents in not issuing â??Câ?? form for various quarters of the year 2017-18

and quarters thereafter with a further prayer to direct the respondents to issue â??Câ?? form to the petitioner companies.

For convenience, the facts necessitating the filing of the various writ petition are taken from S.B. Civil Writ Petition No. 5506/2018.

The petitioner â?" company duly registered under the Indian Companies Act, 1956 is engaged in the business of mining of Zinc and other allied metals

and is registered under the Central Sales Tax Act vide TIN No. 0805390176 with effect from 25.07.2000. The registration is granted to the petitioner â?" company both under Section 7(1) as also under Section 7(2) of the Central Sales Tax Act, 1956 (for short â??the CST Actâ?? hereinafter) for

the various classes of goods specified therein which includes the High Speed Diesel (for short â??H.S.D.â?? hereinafter). For the purpose of running

heavy equipments for open cast and underground mines besides generating electricity for running of the plant and machinery at the mines and its

smelters, the petitioner â?" company requires H.S.D.Â The petitioner â?" company procures the H.S.D. from Oil companies either within the State

or from other States.Â As per sub-section (1) and (3) of Section 8 of the CST Act, the petitioner â?" company is entitled to procure H.S.D. at a

concessional rate of 2% sales tax through interstate trade for the purpose of mining. For this purpose, the petitioner â?" company is required to tender

â??Câ?? form to the vendor as per Section 8(4).Â Section 8(4) of the CST Act reads as under :-

â??8 Rates of tax on sales in the course of inter-State trade or commerce. â?

(1)Â Â xxx â?¦ xxxx to

(3) xxx â?¦ xxxx

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods

furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold

containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.â??

Â Â It is, therefore, essential for the petitioner â?" company to procure the â??Câ?? form from the respondents and forward the same to the vendor

in order to avail the concessional rate of tax on H.S.D.Â The Government of India vide its Notification dated 01.07.2017 enforced the Central Goods

and Service Tax Act, 2017 (for short â??the GST Actâ?? hereinafter) pursuant to which a lot of goods and services came under the purview of the

Goods and

Service Tax.Â The petitioner company has also migrated to the GST Act and has obtained GSTIN number.Â So far as H.S.D. is concerned, no

notification has been issued by the Central Government to bring H.S.D. under the ambit of the Act of 2017. In terms of Section 9(2) of the Act of

2017, the H.S.D. and other petroleum products are to be brought under the net of GST with effect from the date as may be notified by the

Government on the recommendation of the Council.Â Section 9(2) of the Act of 2017 reads as under :-

â??9. Levy and collection. -

(1) xxx â?¦ xxx

(2) The central tax on the supply of petroleumcrude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel

shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.â??

It is, therefore, contended that till a communication or notification is issued to bring H.S.D. under the net of G.S.T., the Value Added Tax or the

Central Sales Tax is required to be paid in accordance with the Rajasthan Value Added Tax Act, 2003 and the CST Act of 1956.Â

The grievance of the petitioner â?" company is, therefore, that in the event the petitioner - company is not issued the â??Câ?? form, the petitioner â?

company will be burdened the liability of purchasing H.S.D. at 24% CST as opposed to 2%.

Learned counsel for the petitioners at the first instance submitted that the dispute involved in the present case is no more res integra in view of the

judgment rendered by the Division Bench of the Punjab & Haryana High Court in the case of Carpo Power Limited Vs. State of Haryana and others

(C.W.P. No. 29437 of 2017) decided on 28.03.2018 vide which the petition challenging the refusal of the respondents to issue â??Câ?? forms in

respect of natural gas purchased by the petitioner therein in the course of inter-state trade or commerce and used for the generation of electricity was

allowed.

Reply has been filed in some of the cases but since it is admitted that the issue involved in all the cases is identical, it was stated that the said reply be

read for all.

Learned counsel for the respondents, although, were not in a position to dispute that the said judgment is not a decision on the same issue as in the

present case but submitted that some of the grounds have not been brought to the notice of the Court in the case of Carpo Power Limited (supra).Â

In doing so, Mr. Falgun Buch, learned counsel appearing for the respondent â?" U.O.I. submitted that vide Taxation Laws (Amendment) Act, 2017

and implementation of GST regime in India, an amendment was brought to the provisions of the CST Act whereby Clause (d) of Section 2 of the CST

Act which contained the definition of â??Goodsâ?? was substituted by the Amendment Act of

2017 in the following manner :-

â??13. In the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Sales Tax Act), in Section 2 -

(a) clause (c) shall be omitted;

(b) for clause (d), the following clause shall be substituted namely ;(d) â?? goodsâ?? means -

(i) Petroleum crude;

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption;â??

However, in light of the above amendment, various State Governments have sought clarification whether the definition of â??goodsâ?? as it appears

in phrase â??manufacture or processing of goodsâ? in Section 8(3)(b) of the CST Act would be as per the definition provided under Section 2(d) of

the CST Act (after amendment) of that the word â??goodsâ? when it appears in the phrase â??manufacture or processing of goodsâ? means any

â??goodâ??.

Now the Department of Revenue, Ministry of Finance, Sales Tax Division, Government of India has issued the clarification vide Office Memorandum

dated 07.11.2017 on the definition of goods in sub-section (3)(b) of Section 8 of the CST Act.Â As per the said clarification â??Department of Legal

Affairs, Ministry of Law has confirmed that the term â??goodsâ? has been specifically defined under the Central Sales Tax Act, 1956 and prima

facie the term â??Goodsâ? referred to in section 8(3)(b) of the Central Sales Tax Act, 1956 will have same meaning as defined and amended under

Section 2(d) of the Central Sales Tax Act, 1956 vide Tax Laws Amendment Act, 2017.Â However, it does not affect the provisions of section 8(3)

(b) of CST Act relating to telecommunication network or mining or generation or distribution of electricity or any other form of power.â?Â Hence, as

per the said clarification on the definition of â??goodsâ?, the term â??goodsâ? as defined under the CST Act and prima facie the term â??goodsâ?

referred to in section 8(3)(b) of the CST Act will have the same meaning as defined and amended under Section 2(d) of the CST Act vide Taxation

Laws (Amendment) Act, 2017.Â However, a specific exclusion was carved out stating that the said amendment does not affect the provisions of

Section 8(3)(b) of the CST Act relating to (a) telecommunication, (b) mining, (c) generation and distribution of electricity or any other form of

power.Â

The argument so raised by the learned counsel for the respondents cannot be sustained in view of the provisions of Section 9(2) of the GST Act as

referred above.Â Thus, any clarification in the existence of a clear Act will not supercede the provisions of the same.Â

While dealing with the similar provisions, the Division Bench of the Punjab & Haryana High Court in the case of Carpo Power Limited (supra)

decided the issue in hand as under :-

â??16. After implementation of the GST Act with effect from 01.07.2017, the definition of `goods' under the CST Act was amended. The amended

definition of `goods' now covers only six items. What is important is that natural gas is one of them.

17. The definition of `goods' in section 2 (52) of the CGST Act is very wide. It includes every kind of movable property, excluding money and

securities but including actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed

before supply or under a contract of supply. Section 9 (2) of the CGST Act provides that petroleum crude, high speed diesel, motor spirit, natural gas

and aviation turbine fuel shall be levied tax under the CGST Act from the date as notified by the Government on the recommendations of the Council.

Sections 2(52) and 9 (2) of the HGST Act are similar to Sections 2 (52) and 9 (2) of the CGST Act.

It is pertinent to note that till date, the Government has not issued a notification under either the CGST Act or the HGST Act. Hence interstate sale of natural gas continues to be governed by the CST Act.

18. Section 174 of the HGST Act, 2017 repealsthe Haryana Value Added Tax Act, 2003 (for short, `HVAT Act'), except in respect of goods included

in the entry 54 which as noted above includes natural gas. Thus the HVAT Act, 2003 continues to remain in operation qua natural gas. Moreover

underSection 9 (2) of the HGST, 2017, the State tax inter-alia on natural gas shall be levied with effect from such date as may be notified by the

Government. The Government has not as yet notified a date.

19. The net effect therefore is that even after theimplementation of the CGST Act, the items mentioned in amended entry 54 are governed by the

CST Act. Further, a notification under Section 9(2) of the HGST Act, 2017 not having been issued natural gas continues to be covered under the CST

Act.â??

In the present case, it is the H.S.D. and it is included in the amended definition of â??goodsâ?? and no notification under the above provisions of

Section 9(2) in case of H.S.D. has been issued till date.Â

The remaining submissions of the learned counsel for the respondents too have been suitably dealt with in the case of Carpo Power Limited (supra)

which is evident from the observations while allowing the petition as under :-

â??26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after

the implementation of the GST laws. There cannot be any occasion to restrict the usage of `C' Form only for the purposes of re-sale of the six items

mentioned in the amended definition of `goods' in Section 2 (d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the

manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other

form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable

to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7 (2)

stipulate that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the

course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by

Section 7 (2) of the Act.

27. There is another aspect of the matter that the registration certificate given to the petitioner under the CST Act till date has not been cancelled. As

per Section 7 (4) of the CST Act, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked.

28. In these circumstances, the writ petition is allowed. It is held that the respondents are liable to issue `C' Forms in respect of the natural gas

purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. In

the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the

petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil

companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing

and the petitioner furnishing the requisite documents/form.â??

Â In the present case too, the Parliament has retained high speed diesel along with petroleum crude, motor spirit, natural gas, aviation turbine fuel and

alcoholic liquor for human consumption crude which have been specifically mentioned in Section 9 of the GST Act while defining the â??goodsâ??.Â

Besides, the registration under Section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of

Section 4 of the CST Act.Â Hence, this Court finds that it is obligatory duty of the respondents to issue â??Câ?? form to the petitioner â?" company

and any failure on the part of the respondents to do so is without any authority of law. Thus, this Court finds nothing to distinguish the case of the

petitioners herein from that of the petitioner in the case of Carpo Power Limited (supra).Â

Accordingly, the present writ petitions are allowed in the same terms as Corpo Power Limited (supra).Â It is held that the respondents are liable to

issue `C' Forms in respect of the High Speed Diesel procured for mining purposes through interstate trade. In the event of the petitioners having had to

pay any amount on account of the respondents wrongful refusal to issue `C' Forms the petitioners shall be entitled to refund and/or adjustment of the

same from the concerned authorities who collected the excess tax. The concerned authorities shall process such a claim within twelve weeks of the

same being made by the petitioners in writing and the petitioners furnishing the requisite documents/form.

