**(2025) 03 CAL CK 1059**

**In the Calcutta High Court, Appellate Side**

**Case No :** WPTTNo. 6 Of 2025

KEC International Limited — APPELLANT

Vs

State Of West Bengal & Ors — RESPONDENT

**Date of Decision :** 25-03-2025

**Acts Referred:**

Constitution of India, 1950 — Article 286
Central Sales Tax Act, 1956 — Section 14, 14(3, 15, 24(3), 27C(3)
West Bengal Value Added Tax Act 2003 — Section 18

**Citation :** (2025) 03 CAL CK 1059

**Hon'ble Judges :** T.S. Sivagnanam, CJ;Chaitali Chatterjee (Das), J

**Bench :** Division Bench

**Advocate :** Shovit Betal, A. Ray, T.M. Siddiqui, T. Chakraborty, S. Sanyal

**Final Decision :** Disposed Of

## Judgement

1. The petitioner is aggrieved by the order dated 11th November, 2024 passed in Case No.RN-692 of 2021 by the West Bengal Taxation Tribunal. There are two parts of the order, of which the petitioner is aggrieved only with regard to the rate of tax leviable at the rate of 14.5% on the iron and steel, which have been used by the petitioner for the purpose of erectional work of high tension transmission line tower. With regard to other portion of the order, the learned Tribunal had remanded the matter back to the Department and it appears that the Department has also passed certain orders.

2. We have elaborately heard Mr. Betal, learned advocate for the petitioner and Mr. Siddiqui, learned Senior Advocate for the respondent State.

3. The legal issue involved in this case is whether iron and steel structures that are used by the petitioner for the purpose of erecting high-tension transmission line tower would lose their character of iron and steel structures at the point of accretion. This issue is no longer res integra and has been decided by the Hon’ble Supreme Court in the case of B. Narasamma vs. Deputy Commissioner of Commercial Taxes, Karnataka & Anr. reported in (2016) 15 SCC 167 wherein it

 

was held that where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type. Therefore, held, that the declared goods in question could only be taxed at the rate of 4% as iron and steel only and not the higher rate levied in respect of civil construction works generally. The Hon'ble Supreme Court took note of the decisions passed in the cases of Builders' Association of India vs. Union of India reported in (1989) 2 SCC 645; Gannon Dunkerley and Co. vs. State of Rajasthan reported in (1993) 1 SCC 364 and State of Tamil Nadu vs. Pyare Lal Malhotra reported in (1976) 1 SCC 834 and held as follows:-

"Given the fact situation in these appeals, it is obvious that para 10 of this judgment in Pyare lal Malhotra case squarely covers the case against the State, where, commercial goods without change of their identity as such, are merely subject to some processing or finishing, or are merely joined together, and therefore, remain commercially the same goods which cannot be taxed again, given the rigor of Section 15 of the Central Sales Tax Act. We fail to see how the aforesaid judgment can further carry the case of the Revenue."

4. To the same effect is the decision in the case of Singh Construction Company vs. State of Haryana & Ors. reported in (2020) 76 GSTR 250 wherein it was held as follows :

"8. From the above-cited decisions, the position emerges that the goods involved in the works contract are taxed as deemed sales. The restrictions under Article 286 of the Constitution of India would apply on the State legislature while taxing the works contract. The State Legislature has power to prescribe uniform rate of tax on the goods involved in the works contract in spite of the fact that different rates are prescribed under the Act for the constituents involved therein. Further that identity of the goods transferred is lost in the process does not prevent them from being goods.

9. The contention of learned counsel for the State that the goods when being incorporated were transferred in some other form and hence ingredients lose their identity, cannot be accepted, as there is a deemed sale of the ingredients of "hot mix material" and the loss of identity of goods does not prevent them from being goods for the purpose of deemed sale."

5. Section 18 of the West Bengal Value Added Tax Act 2003 deals with levy of tax on taxable contractual transfer price. In sub-section (1) it is stated that subject to the provision of sub-section (2) the tax payable by a dealer, who is liable to pay tax under section 14 or sub-section (3) of Section 24 or sub-section (3) of Section 27C for transfer of property in goods involved in the execution of works contract, shall be levied on his taxable contractual transfer price at the following rate. Clause (a) of sub-section 3 of Section 18 states that the tax shall be at the rate of 5% where the goods represents those specified in Section 14 of the

 

Central Sales Tax Act, 1956 and Clause (b) states that the rate will be 14.5% where goods represents other than those specified in clause (a) or clause (aa). Section 14 of the Central Sales Tax Act deals with certain goods to be of special importance in inter-State trade or commerce where under Clause (iv) iron and steel have been mentioned. So, these goods are declared goods. In the light of the above, the said goods can be charge only at the rate of 5% as they represent those specified in Section 14 of the Central Sales Tax Act, 1956.

6. For the above reasons, the order impugned in this petition as well as the order passed by the West Bengal Commercial Taxes Appellate and Revisional Board and the order passed by the Senior Joint Commissioner, Commercial Taxes, Kolkata South Circle as well as the order passed by the Assessing Officer are set aside and the matter is remanded back to the Assessing Officer to calculate the rate tax at the rate of 5% in the declared goods, for which the petitioner shall produce necessary supply invoices and other documents that may be called for and the Assessing Officer shall take a fresh decision in this regard after affording an opportunity of personal hearing to the authorized representative of the petitioner as expeditiously as possible.

7. It is made clear that since the Revisional Board has accepted the books of accounts of the petitioner, the same should not be reviewed or disturbed and remained confined only with regard to the rate of tax on the specified goods.

8. With above direction, this petition is disposed of.