
(2013) 03 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 45 (AP) of 2011

OMIL-JSC-JV

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(3)
Central Sales Tax Act, 1956 — Section 7, 8, 8(1)
Constitution of India, 1950 — Article 226, 265

Citation : (2013) 198 ECR 427 : (2014) 1 GLT 721 : (2013) 61 VST 370

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : B.P. Todi, A. Nath, A. Todi, K. Jini and D. Loyi, for the Appellant; Muk Pertin, Tony Pertin, A.K. Singh and A. Nima, for the Respondent

Judgement

P.K. Musahary, J.—The petitioner has approached this court under article 226 of the Constitution of India praying for issue of an appropriate writ directing the respondent, North Eastern Electric Power Corporation Ltd. (in short, "NEEPCO") to issue declaration form C under the Central Sales Tax Act, 1956 to the petitioner who is carrying on the works allotted by NEEPCO. It is contended that the officials of NEEPCO illegally withheld issue of C form inspite of their assurances time and again and ultimately declined and rejected the same vide the impugned letter dated October 29, 2010 on the ground that there is no provision in the contract agreement for issue of C forms. The liability of the respondent NEEPCO to issue the declaration form C to the petitioner for the supply made in execution of works contract allotted is the main question involved in this petition. Another point of determination that has been raised as an objection by the respondent is as to whether the issue involved which happens to arise during the course of execution of the contract agreement can be taken up by the writ court without the same being referred to arbitration. Challenge to the maintainability of the present petition has also been raised by the respondents for want of territorial jurisdiction of this court.

2. The relevant facts leading to this case are as under:

(i) The petitioner, a joint venture organization carrying on, inter alia, the business of works of designing, fabrication, erection and commissioning of pen stock steel liner and all the hydro mechanical works and equipments and all the associated works in various States of India, was awarded a contract on December 17, 2004 by NEEPCO for supply, design, fabrication and erection of pen stock steel liner and all hydro mechanical works/equipments under Kameng Hydro Electrical Project (Package IV) vide work order dated December 17, 2004.

(ii) Before awarding of the work to the petitioner, NEEPCO vide its letter dated February 6, 2004 in connection with Kameng Hydro Electrical Project (Package IV) informed that Kameng Hydro Electrical Project is yet to be certified by Government of India as a mega project and in the event of such certification certain benefits would be applicable including exemption of sales tax and local levies. The petitioner had submitted its bid price pursuant to the letter dated February 6, 2004 and the contract was awarded as per rate bidden.

(iii) NEEPCO by its another letter dated May 15, 2006 giving reference to the work order dated December 17, 2004 enclosed the mega project certificate in respect of Kameng Hydro Electrical Project issued by Joint Secretary to the Government of India, Ministry of Power, New Delhi, and requested the petitioner to avail of the admissible benefits of taxes and duties as per norms and arrange to dispatch pen stock steel liners and all hydro mechanical items as described in the contract agreement pertaining to Package IV of Kameng Hydro Electrical Project. NEEPCO being a registered dealer under the Central Sales Tax Act, 1956 as well as under Arunachal Pradesh Goods Tax Act, 2005 also gave their Central sales tax registration number as well as VAT registration number to the petitioner.

(iv) The petitioner in order to accelerate the progress of the work set up its factory at Howrah, West Bengal, with due approval of the authorities of NEEPCO. The petitioner by its letter dated November 17, 2008 informed NEEPCO about such setting up of workshop at Howrah, West Bengal and started sending pen stock steel liners from Howrah, West Bengal charging in the invoices, Central sales tax at two per cent as maximum applicable benefit as per section 8(1) of the Central Sales Tax Act, 1956 starting from November 21, 2008. The said two per cent Central sales tax as charged in the invoices was deposited by the petitioner to the concerned sales tax authorities at Howrah, West Bengal, under whom the petitioner is registered in West Bengal.

(v) The petitioner had by its letter dated March 7, 2009 requested NEEPCO to issue C forms with regard to supply made with effect from November 21, 2008 to December 15, 2008, i.e., third quarter for the purpose of submission of the same to the sales tax authorities of Howrah, West Bengal. The petitioner by its yet another letter dated April 20, 2009 wrote to NEEPCO that sales tax authorities have given them time up to April 15, 2009 for production of C form in respect of sales made and it was stated that till the date of issue of said letter, i.e., April 20,

2009, the petitioner has not received C form from NEEPCO and that without the submission of C form issued by NEEPCO to the concerned sales tax authorities at Howrah, West Bengal, it may not anymore be possible for the petitioner to continue production/dispatch of pen stock steel liners from Howrah paying two per cent CST.

(vi) NEEPCO had by its letter dated March 19, 2009 wrote to the petitioner that pursuant to discussion and meeting at Tezpur and requirement of Central sales tax declaration form C for the petitioner's dispatches from West Bengal to project site at Kimi, Arunachal Pradesh, NEEPCO confirms that the matter of issue of C form to the petitioner is under active consideration with the Corporation. It was further stated that owing to some administrative problem they are not in a position to issue C forms to the petitioner at that moment. The NEEPCO by its letter dated April 22, 2009 even wrote to the Commissioner of Commercial Taxes, Government of West Bengal, in connection with issue of C form in the following words:

Our Corporation is in the process of issuing C forms against the cited agreement. The matter is under active consideration of our competent authority.

Meanwhile we have received a letter from our contractor that they are being pressed hard for submission of C forms or face penal consequences. We humbly request you to kindly bear with them since the issuance of declaration form is in active consideration at our end. This request is being made in order to enable us to carry on with the construction of 600 MW Kameng HE Power Project without any disruption in the fabrication works under the cited contract.

(vii) The NEEPCO ultimately by its letter dated October 29, 2010 informed the petitioner that the petitioner's request for issue of C forms against the materials dispatched from Howrah to Kimi was referred to Corporate Taxation Cell wherein it was decided that C forms cannot be issued to such transfer to Kimi since there is no provision in the contract agreement for the same.

(viii) The petitioner in the meantime have received notice dated December 14, 2010 from the Joint Commissioner of Commercial Taxes, West Bengal, due to the petitioner's failure to furnish declaration form C u/s 8 of the Central Sales Tax Act, 1956, wherein it was stated that for failure to submit declaration form C penalty not exceeding 50 per cent of the amount would be payable besides levy of tax.

3. Heard Dr. B.P. Todi, learned senior counsel assisted by Mr. A. Todi, learned counsel for the petitioner as well as Mr. T. Pertin, learned counsel for the respondent-Corporation.

4. The respondent-Corporation NEEPCO has filed an affidavit raising preliminary objections to the maintainability of the present writ petition on the following main grounds:

(i) That the present issue with respect to the furnishing of C form to the

contractor by the Corporation which is being disputed by the Corporation give rise to difference of opinion between the parties to the subject-matter. Contract agreement does have the provision to resolve/decide the dispute through arbitration vide clause No. 70 of general condition of contract, as such writ is not maintainable;

(ii) That this court has no territorial jurisdiction in view of clause No. 68 of the contract agreement according to which the court at Shillong has jurisdiction to entertain civil suit pertaining to the contract. Further, contract agreement was executed at Shillong.

5. Mr. T. Pertin, learned counsel for the respondent-Corporation, strongly arguing on the above preliminary objections, persuaded this court to reject the present writ petition as not maintainable for want of jurisdiction of this court. Moreover, Mr. Pertin submits that the present matter involves disputed question of fact, arising out of the contract, relating to furnishing of C form to the petitioner in view of the contractual stipulation in the contract agreement executed, giving rise to difference of opinion between the parties to the subject-matter, and such dispute cannot be adjudicated in a proceeding under article 226 of the Constitution inasmuch as it requires detailed examination of the disputed questions for which appropriate forum is the Arbitral Tribunal as provided under clause No. 70 of the contract agreement.

6. With regard to the stand of NEEPCO that matter should have been referred to arbitration, Dr. Todi, learned senior counsel for the petitioner submits that it is not a dispute where some damage is claimed. According to him, where there is a dispute with regard to clauses of the agreement, deviation, non-fulfilment of clauses of contract affecting rights of the parties claiming damages, the forum of arbitration may be appropriate but not in cases, for example, matters pertaining to industrial disputes, nonpayment of admitted liability and taxation matter, etc. Although these are the instances of disputes of any kind such matters need not be referred to arbitration. It is also submitted that matters relating to taxing statutes which are to be adjudicated by Tribunals/courts need not be referred to arbitration. The petitioner herein in this petition simply prays for a direction against refusal of NEEPCO to fulfil its obligation and requirement under a taxing statute. In support of the above contentions Dr. Todi, relies on a judgment of the Jammu and Kashmir High Court rendered in Subash Chander Gupta and Others Vs. Union of India (UOI) and Others, , which involves similar facts wherein it was held that although the contract between the parties contained an arbitration clause the question relating to the liability to pay tax, which is a statutory liability, the arbitration clause in the contract is not an absolute bar to entertain the writ petition.

7. In this matter a question has also arisen as to whether the jurisdiction of this court can yet be ousted and referred to arbitration considering the subject-matter of the present petition. To find an answer to the above question one may refer to section 2(3) of the Arbitration and Conciliation Act, 1996 which is quoted

hereunder:

2. (3) This part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

8. A perusal of the provisions of the Arbitration and Conciliation Act, 1996 and of the above quoted section 2(3) makes it clear that all or certain disputes arising in respect of defined relationship, whether contractual or not, can be referred to arbitration subject, however, to sub-section (3) of section 2 which provides that Part I shall not affect any other law for the time being in force by virtue of which certain disputes may not be referred to arbitration. Disputes which are capable of reference to arbitration must necessarily arise between the parties "in respect of a defined legal relationship, whether contractual or not". A claim reference whereof to arbitration is specifically barred by agreement between the parties or by any law for the time being in force, does not constitute "dispute" between the parties for reference thereof to arbitration and the Arbitral Tribunal shall have no jurisdiction in such matters. Accordingly, where the law has given jurisdiction to determine certain matters to specific Tribunals only, those matters cannot be referred to arbitration. The Central Sales Tax Act, 1956 provides for applicability of the provisions of local State taxation law with regard to procedures and powers of the authorities and all disputes are to be decided either in appeal/revision to the concerned tax authorities, or in appeal to the Appellate Tribunal, or in revision to the High Court. Thus, it can be inferred that for matters relating to taxation, the Central taxation statute as well as the State taxation statute provide a hierarchy of Tribunals and under such circumstances it cannot be held that the matter in hand could be referred to arbitration.

9. I have carefully gone through Subash Chander Gupta and Others Vs. Union of India (UOI) and Others, . In the said case it is held that the question was not merely of performance and non-performance of contractual obligations affecting the civil/contractual rights of the parties but also of liability to pay tax which was statutory exaction and therefore, the writ court, cannot shut its eyes and refuse to interfere only on the ground that the question raised was only one of enforcement of contractual obligation particularly when the enforcement of contractual obligation involves rights and liabilities of the parties under statutory provisions. In this regard, it would be apt to refer to and quote paragraphs 13, 15 and 18 of the said judgment (pages 234-236 and 238 in 144 STC):

13. Mr. V.K. Shall, learned counsel appearing for the respondents, has also referred to clause 12 of the special terms and conditions of the contract, which, inter alia, provide reference of all questions arising out of contract to the arbitrator and it is accordingly stated that the issue involved being referable to arbitration in view of the wide amplitude of the arbitration clause, writ petition is not maintainable, that too after the contract stands concluded. It is vehemently argued on behalf of the respondents that since there is efficacious alternative remedy, discretionary jurisdiction to be exercised by the writ court, should not be exercised in such a case. No doubt, the contract between the parties do contain

an arbitration clause and the issue arbitral thereunder. However, the question raised in the writ petitions relates to the liability to pay tax, which is statutory liability. In view of the specific constitutional provision contained under article 265 of the Constitution of India and section 114 of the Constitution of Jammu and Kashmir, there is constitutional prohibition from levying and recovering the tax without the authority of law. Therefore, what needs to be examined, is not enforceability and interpretation of mere contractual obligations, but also statutory liability of the petitioners to pay tax in the manner demanded under the contract. The apex court in *Verigamto Naveen Vs. Government of Andhra Pradesh and Others*, , held as under:

On the question that the relief as sought for and granted by the High Court arises purely in the contractual field and, therefore, the High Court ought not to have exercised its power under article 226 of the Constitution placed very heavy reliance on the decision of the Andhra Pradesh High Court in *Y.S. Raja Reddy v. A.P. Mining Corporation Limited* (1988) 2 ALT 722, and the decisions of this High Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, , *Ramlal and Sons Vs. The State of Rajasthan*, , *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, , *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, . Though there is one set of cases rendered by this court of the type arising in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, , much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such powers or its decision is perverse or passed an irrational order, this court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this court in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, , *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, and *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, , where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into contract in cancelling the contract which is subject of terms of the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under article 226 of the Constitution is not called for. This contention also stands rejected.

...

15. As said above, the issue in the present cases involve the statutory liability to pay tax under law and therefore, the alternative remedy of arbitration even if include within its ambit, the issue involved cannot form a valid ground to prevent the writ court from exercising its discretionary jurisdiction under article 226 of the Constitution of India. I, therefore, hold that the arbitration clause in the contract is not an absolute bar and considering the issue involved, the remedy of writ cannot be denied to the petitioners.

18. The ratio of the aforesaid judgments is clearly applicable to the facts of these cases. The question is not merely of performance and non-performance of contractual obligations effecting the civil/ contractual rights of the parties. The issue being liability to pay tax, which is statutory exaction and not the breach of the contract alone, therefore, the writ court cannot shut its eyes and refuse to interfere only on the ground that the question raised is one of enforcement of contractual obligation particularly when the enforcement of contractual obligation involves rights and liabilities of the parties under statutory provisions. The writ court under such circumstances, cannot deny a party of its right to have the issue decided by a writ court. The writ petitions are thus maintainable under the present set of circumstances.

10. In my considered opinion the ratio of the judgment passed in Subash Chander Gupta and Others Vs. Union of India (UOI) and Others, is fully applicable to the present case. The issue in the present case is with regard to issue of declaration form C by the respondent-NEEPCO to the petitioner for availing of the concessional rate of tax under the Central Sales Tax Act, 1956, which is a statutory exaction and a requirement for compliance of the provision of the Central Sales Tax Act, 1956 and not the breach of any of the terms of the contract agreement. Therefore, jurisdiction of the writ court is not barred in taking up matters of taxation and liabilities under taxation statutes and cannot refuse to interfere on the ground that the question raised arises out of contractual agreement and is one of enforcement of contractual obligation and the same should be referred to arbitration. The writ court under such circumstances, cannot deny a party of its right to have the issue decided by a writ court.

11. With regard to contention of the NEEPCO that the said petition ought to have been filed in Shillong since NEEPCO's head office is situated at Shillong, Dr. Todi submits that both the petitioner and NEEPCO are registered dealers in Arunachal Pradesh and carrying on work of the project at Kameng in Arunachal Pradesh. As such this Bench of the Gauhati High Court can hear the matter and the petitioner is not required to file its case in Shillong for legal remedy. It is within the jurisdiction of this Bench inasmuch as the petitioner as well as NEEPCO are carrying on their business and the cause of action has arisen in the State of Arunachal Pradesh giving jurisdiction to this court to entertain this petition. It is further stated that the goods sold in the course of inter-State trade and commerce, against which declaration form C is being sought from the

respondents, are transferred to the respondent-NEEPCO in execution of the contract works of Package-IV of Kameng Hydro Electric Project in the State of Arunachal Pradesh. Delivery of goods being an integral part of the cause of action, the cause of action can also be said to have arisen in the State of Arunachal Pradesh giving jurisdiction to this court to entertain the petition. In order to bring home this submission, Mr. Todi, relies on the judgment of this High Court in *Goodrich Group Ltd. v. Mahmood Hasan Sultan* (2011) 1 NEJ 237. According to him, in the said case, the vital question as to whether a suit must be instituted at the very place, where the "cause of action" arises or where the sole or principal office is located or is it permissible to institute a suit, at a place, solely on the ground that a subordinate or branch office of the defendant-company is located there, has been discussed and decided. Referring to the Explanation to section 20 of the Code of Civil Procedure, 1973 it was held that section 20 clarifies that though the principal office on the sole office of a company may be at different place, the suit can nevertheless be instituted at the place, where the "cause of action" has arisen and also where the defendant-company's office is situated. What is, however, extremely important to note is that the location of the subordinate office does not create the jurisdiction for the court. Far from this, it is the "cause of action" which creates the jurisdiction for the court. There is no impediment in law in instituting a suit against a company at a place where the "cause of action", either in whole or in part, arises. Even at the place where "cause of action" for a suit may have arisen, a suit may be instituted if the sole or principal office of the company is located there, for the Explanation to section 20 creates a legal fiction that a company shall be deemed to have been carrying on business at the place, where its sole or principal office is located.

12. The petitioner also relies upon the judgment of the apex court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, , which was also relied upon in the case of *Subash Chander Gupta and Others Vs. Union of India (UOI) and Others*, . The apex court in *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, held as under:

From the provision in clause (2) of article 226, it is clear that the maintainability or otherwise of the writ petition in the High Court depends on whether the cause of action for filing the same arose, wholly or in part, within the territorial jurisdiction of that court.

In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.

13. Provision of article 226 of the Constitution of India provides that a court within whose territorial jurisdiction cause of action wholly or in part arises shall have the jurisdiction to entertain a petition under article 226 of the Constitution.

The question, therefore, arises as to whether any cause of action arose within the territorial jurisdiction of the State of Arunachal Pradesh in respect of the transaction of sale of goods against which declaration form C is to be issued by the respondent-NEEPCO, to the petitioner.

14. In a sale of goods involve offer, acceptance and consideration. All these relates to goods which are the corpus and transfer of goods cannot be segregated from the total cause of action of the transaction of sale. The goods against which declaration form C is being sought by the petitioner, as per various apex court rulings, are deemed to have been transferred to the respondent-NEEPCO in the State of Arunachal Pradesh in execution of the works contract by the petitioner. Delivery of goods being an integral part of the cause of action, the cause of action can also be said to have arisen in the State of Arunachal Pradesh giving jurisdiction to this court to entertain the petition. In my considered view, the ratio of the judgment in *Goodrich Group Ltd. (2011) 1 NEJ 237* and *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, are fully applicable to the present case. Applying the law laid down in the above cases, cause of action in part has arisen in the State of Arunachal Pradesh giving jurisdiction to this court to entertain this petition.

15. Coming to the principal question and the relief claimed in this petition as regards liability of the respondent-NEEPCO to issue the declaration form C to the petitioner for the supply made in execution of works contract allotted, Mr. Pertin, learned counsel for the NEEPCO submits in support of affidavit filed that the petitioner is bound by the terms and conditions of the contract agreement and at no point of time the issue of setting up of the workshop at Howrah, West Bengal was discussed nor any extra financial involvement or issuance of form C was discussed. It is submitted that the petitioner had set up its workshop at Howrah, West Bengal, instead of its earlier declared place at Kota in Rajasthan as declared at the time of submission of tender contemplating that the materials would be fabricated at their manufacturing unit at Kota and would be transported to the project site. Therefore, if for the own convenience of the petitioner they have chosen to fabricate the materials at Howrah, West Bengal and in the process had become liable for payment of tax the onus to redeem the same cannot be placed on the shoulder of the NEEPCO. It was further submitted that as per clause No. 45, Volume 1, Part HI of the conditions of contract, the petitioner was under contractual obligation to warn the NEEPCO at the earliest opportunity of any future event or circumstances that may increase the contract sum. The non-issuance of C form is neither illegal nor arbitrary due to the fact that the goods involved in works contract are taxable under the Central Sales Tax Act, 1956, if there is inter-State sale of goods. The supply of the materials were under the scope of contract as per clause No. 48 and all taxes, duties are deemed to be included in the quoted rates of items of work in view of the provision under clause No. 7 of the detailed work order which provides that all taxes, levies and duties prevailing prior to January 30, 2004 are to be included in the rates for various items of work and even as per clause No. 12 of the Instruction to

Bidders, Volume 1, Part II, Package-IV the bidder had to quote rates and prices for all items inclusive of all taxes, etc. It was contended that building up of the works were taking place after the materials were brought at work site and till that time no sale took place between NEEPCO and the petitioner-contractor as the materials brought were the property of the petitioner till the time the petitioner makes erection and installation/ commissioning. So long sale is not taken place NEEPCO can neither be held liable for Central sales tax nor is bound to issue C forms either under any law or under the contract agreement.

16. On the question of non-issue of declaration form C by the respondent-NEEPCO, Dr. Todi, learned senior counsel for the petitioner submits that the respondent-Corporation NEEPCO once availed of the concessional rate of tax and once on their request the petitioner acted upon to charge concessional rate of tax for the materials dispatched, the NEEPCO is legally bound to issue C forms as per requirement of section 8(1) of the Central Sales Tax Act, 1956 read with rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957. It is stated that non-issuance of C forms by NEEPCO and consequential failure to submit the same by the petitioner before the Sales Tax Authority at Howrah, West Bengal, would attract penal consequences besides payment of higher amount of tax by the petitioner. It is submitted that NEEPCO cannot refuse to issue C form simply because of the reason that there is no provision in the contract agreement, when they were issuing letters one after another to the petitioner to the effect that issue of C form is under its active consideration and owing to administrative problem they could not issue at that point of time and when they wrote to Commissioner of Commercial Taxes, West Bengal that NEEPCO is in the process of issuing C form. It is further submitted that the petitioner is not giving any financial burden of two per cent CST upon NEEPCO and further NEEPCO is not going to bear any financial burden due to issuance of C form as the same is issued by the Superintendent of Taxes of the concerned Sales Tax Department of a State under whom one is registered. The NEEPCO being a registered dealer under the Central Sales Tax Act in the State of Arunachal Pradesh can obtain such C forms without any financial burden.

17. In reply to the contentions of the NEEPCO, Dr. Todi learned counsel for the petitioner, also submits that NEEPCO in its affidavit filed, have taken contradictory stands. NEEPCO's stand that neither the setting up of workshop at Howrah nor any extra financial involvement or issuance of C form was discussed and that if the petitioner is liable for payment of taxes it cannot be placed on the shoulder of NEEPCO is totally without basis. He submits that in the affidavit filed NEEPCO admitted that the materials would be fabricated at the petitioner's manufacturing unit at Kota in Rajasthan. The State of Rajasthan and West Bengal both are outside the State of Assam and if NEEPCO has no problem for the State of Rajasthan, there cannot be any ground or have any problem for West Bengal since the petitioner informed NEEPCO about setting up its factory in West Bengal. Dr. Todi referred to section 8 of the Central Sales Tax Act, 1956 and the same is quoted below:

8. Rates of tax on sales in the course of inter-State trade or commerce.--(1) Every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be two per cent of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), shall be at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State.

Explanation.--For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

(3) The goods referred to in sub-section (1),-

(a)...

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(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 the authority may, for sufficient cause, permit.

18. Referring to the aforequoted section 8, Dr. Todi submits that section 8(1) of the Central Sales Tax Act, 1956 provides that two per cent tax shall be levied on dealer who in the course of inter-State trade or commerce, sells to another registered dealer. Sub-section (4) of section 8 provides that provision of sub-section (1) shall not apply unless the dealer selling the goods furnishes a declaration signed by registered dealer to whom the goods are sold giving the prescribed particulars in prescribed form obtained from prescribed authority. He further submits that rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957 provides that the declaration form referred to sub-section (4) of section 8 shall be in forms C and D, respectively. Failure to furnish C form as per sub-section (2) of section 8 amounts to selling to non-registered dealer and in that case tax on such sales are payable at the rates applicable in the State on such sale.

19. In support of the contentions advanced, Dr. Todi relies upon the judgment of the Division Bench of the Andhra Pradesh High Court in *Modern Proteins Ltd. Vs. Food Corporation of India*, , which involves similar facts in which the FCI refused to issue C form on the ground that the contract does not stipulate issue of C forms by the FCI. In the said case it is held that merely because the contract does not stipulate issue of C forms by FCI, it cannot refuse to issue the said forms to its seller who is entitled to the benefit of section 8(1) of the Act. Although there is no express provision requiring FCI or for that matter, other Government and non-Government bodies to issue C forms there is an implied obligation to issue such forms. This has been discussed in paragraph 4 of the said judgment which is quoted hereunder (pages 406 and 407 in 52 STC):

From the above provisions and the form C prescribed in this behalf, it is clear that the registered dealer to whom the goods are sold, has to furnish form C. As contended by Sri Venkatarama Reddy, the learned counsel for the Corporation, that rule does not specifically lay down that the purchaser of the goods shall issue C form to the seller. But that obligation can be inferred from the intendment of the Act and the other specific provisions made in this behalf in regard to signing of the declaration in form C and the right of seller to pay only four per cent sales tax on inter-State sales. Sub-rule (3) of rule 12 makes a specific provision entitling the seller to demand from the dealer who purchased goods to issue a duplicate form in case the form already issued is lost. In sub-rule (8)(a) of rule 12, the person who is required to sign the declaration in form C referred to in clause (a), is stated to be the person referred to in clause (a) of sub-rule (1) of rule 3 and the proviso thereof specifies the persons who are required to sign in case the registered dealer is the proprietor of any business or a partner of a firm or a karta or manager of a Hindu undivided family; and in the case of a company, any other officer authorised by it. When the Act envisages that only a tax of four per cent is leviable in the case of inter-State sales and not 10 per cent under the Andhra Pradesh General Sales Tax Act in respect of such sales and entitles the registered dealer to pay this concessional rate of tax and prescribes the model by which he can claim this concessional rate, it could not

have been the intention of the Legislature to defeat this provision at the sweet will and pleasure of the purchaser of the goods. Form C can be signed only by the purchaser of the goods and it is only by filing such forms, the registered dealer can take advantage of the provisions contained in section 8 of the Act; and that right cannot be defeated by the volition of another registered dealer who is the purchaser. It cannot be the intention of the Legislature to deny this benefit upon the refusal of the purchaser to issue C forms and it is made clear by providing under sub-rule (3) of rule 12 that in case the original forms issued by the dealer are lost, the seller can demand the purchaser to issue a duplicate form, which necessarily implies that even initially there was such an obligation to issue C forms. Merely, because the contract does not stipulate that the Food Corporation of India shall issue C forms in regard to inter-State sales to its sellers, it cannot refuse to issue the forms to its seller who is entitled to the benefit of section 8(1) of the Act only on production of such forms. Although there is no express provision requiring the Food Corporation of India or for that matter the Government and other non-Government bodies to issue C forms, there is an implied obligation to issue such forms in the case of inter-State sales so as to enable the registered dealer who has sold the goods described in sub-section (3) of section 8 in the course of inter-State sales, to pay lesser tax of four per cent under the Central Sales Tax Act and avoid the liability of paying 10 per cent sales tax under the Central Sales Tax Act in respect of his turnover. In this view of the matter, a writ of mandamus shall issue to the respondents to issue C forms in respect of the turnover covered by section 8(1) and (4) read with rule 12(1) and 12(8)(a) of the Rules referred to above, as requested by the petitioner-company in its letter dated August 1, 1980, in respect of the above transaction. The writ petition is accordingly allowed. No costs.

20. Consideration of section 8 of the Central Sales Tax Act, 1956 as quoted above makes it abundantly clear that if, in the course of inter-State trade or commerce, any sale is effected by a registered dealer, of the goods described in sub-section (3) of section 8, the tax shall be only two per cent (with effect from June 1, 2008) of the turnover or such other rate as shall be applicable to the sale of such goods inside the appropriate State under the sales tax law of that State, whichever is lower. However, the Legislature intended the seller and the purchaser to furnish a declaration, and made a provision in sub-section (4) of section 8 requiring the registered dealer to whom the goods are sold, to file a declaration as prescribed by the Rules. Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957, is the rule which prescribes the declaration forms stated in sub-section (4) of section 8.

21. Rule 12, in so far as it is relevant for the purpose of this case, reads as follows:

12. (1) The declaration and the certificate referred to in subsection (4) of section 8 shall be in forms C and D respectively:

...

(2) Where a blank or duly completed form of declaration is lost, whether such loss occurs while it is in the custody of the purchasing dealer or in transit to the selling dealer, the purchasing dealer shall furnish in respect of every such form so lost an indemnity bond in form G to the notified authority from whom the said form was obtained, for such sum as the said authority may, having regard to the circumstances of the case, fix. Such indemnity bond shall be furnished by the selling dealer to the notified authority of his State if a duly completed form of declaration received by him is lost, whether such loss occurs while it is in his custody or while it is in transit to the notified authority of his State:

Provided that where more than one forms of declaration is lost, the purchasing dealer or the selling dealer, as the case may be, may furnish one such indemnity bond to cover all the forms of declarations so lost.

(3) Where a declaration form furnished by the dealer purchasing the goods or the certificate furnished by the Government has been lost, the dealer selling the goods, may demand from the dealer who purchased the goods or, as the case may be, from the Government, which purchased the goods, a duplicate of such form or certificate, and the same shall be furnished with the following declaration recorded in red ink and signed by the dealer or authorised officer of the Government as the case may be, on all the three portions of such form or certificate:-

I hereby declare that this is the duplicate of the declaration form/certificate No...signed on...and issued to...who is a registered dealer of...(State) and whose registration certificate number is..." (4) and (5)...

(6) Form C referred to in sub-rule (1), or as the case may be, Form F referred to in sub-rule (5), shall be the one obtained by the purchasing dealer or, as the case may be, the transferee in the State in which the goods covered by such form are delivered.

Explanation.--Where, by reason of the purchasing dealer not being registered u/s 7 in the State in which the goods covered by form C referred to in sub-rule (1) are delivered, he is not able to obtain the said form in that State, Form C may be the one obtained by him in the State in which he is registered under the said section.

(7) The declaration in form C or form F or the certificate in form E-I or form E-II shall be furnished to the prescribed authority up to the time of assessment by the first assessing authority:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit.

(8) to (10)...

22. On perusal of rule 12 quoted above it becomes clear that the said rule specifically lay down that the purchaser of the goods shall issue C form to the seller and that obligation is a statutory exaction of the Central Sales Tax Act, 1956, and the other specific provisions made in this behalf in regard to obtaining of the declaration form C, issue of duplicate in case of loss of such declaration and furnishing of indemnity bond, signing of the declaration and the right of the seller to demand a duplicate of the declaration form C in case of loss of the original. There is no scope of defeating the intention of the Legislature stated in its provision at the sweet will and pleasure of the purchaser of the goods. There is also no scope for denying the benefit available to a selling dealer as intended by the Legislature upon the refusal of the purchaser to issue C forms and it is made clear by providing under sub-rule (3) of rule 12 that in case the original form issued by the purchasing dealer is lost, the selling dealer can demand the purchasing dealer to issue a duplicate form. This necessarily implies that there exists an obligation to issue C forms by the purchasing dealer.

23. Upon consideration of the statutory provisions as above and the ratio in the case of *Modern Proteins Ltd. Vs. Food Corporation of India*, I am of the considered view that NEEPCO is statutorily bound under the provisions of the Central Sales Tax Act, 1956 to issue C forms to the petitioner as per the claim made. Merely, because the contract agreement does not stipulate issue of C forms it cannot refuse to issue the forms to the petitioner who is entitled to the benefit u/s 8(1) of the Act only on production of such forms. There is an express provision requiring the purchasing dealer to issue C forms, creating a statutory obligation to issue such forms to enable the selling dealer who has sold the goods in the course of inter-State sales, to avail of the benefit of lower rate of tax under the Central Sales Tax Act and avoid the liability of paying higher rate in respect of its turnover in case of failure to submit C forms to be issued by the purchasing dealer.

24. Moreover, it is found in the present case that the respondent-NEEPCO, through its correspondences to the petitioner, even prior to awarding the contract work, requested to avail of concessional rates of taxes, gave assurances to the petitioner time and again to issue C forms and even communicated to the Commissioner of Commercial Taxes, West Bengal in connection with issue of C form in order to avoid any disruption of the supply of the contract materials. In the aforesaid facts and circumstances, it cannot be allowed to deny the same and reject the claim of the petitioner on the pretext of absence of any provision in the contract agreement to issue C form. The impugned letter dated October 29, 2010 refusing to issue form C is impermissible and unacceptable under the provisions of law and the same is liable to be quashed and set aside. It is accordingly, quashed and set aside.

In view of the above discussion, this petition stands allowed. The respondent-NEEPCO is directed to issue the required C forms to the petitioner within a period of one month from the date of receipt of a certified copy of this order. No order

as to cost.