



BGR ENERGY SYSTEMS LIMITED

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December 26, 2023

National Stock Exchange of India Limited
Listing Department
Exchange Plaza, Bandra Kurla Complex,
Bandra (E), Mumbai- 400051

BSE Limited
Department of Corporate Services
P J Towers, Dalal Street,
Fort, Mumbai- 400001

NSE Symbol: BGREENERGY

BSE Scrip: 532930

Dear Sir / Madam,

Sub.: Disclosure under Regulation 30 read with Clause 8 to Para B of Part A of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended

The Honourable High Court of Judicature for Rajasthan Bench at Jaipur vide its order dated 21/12/2023 (copy enclosed) inter alia disposed of the cross Sales Tax Revisions / References filed by the Company in respect of contracts for supply of materials and providing services for setting up of 2x600 MW Kalisindh Thermal Power Project at Jhalawar, Rajasthan by Rajasthan Vidyut Utpadan Nigam Limited.

The Company is exploring further course of action including preferring an appeal against the aforesaid order before appropriate forum(s).

Kindly take the above information on record.

Thanking You,

**Yours truly,
For BGR Energy Systems Limited**

**KRISHNA
KUMAR**

Digitally signed by KRISHNA KUMAR
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Date: 2023.12.26 18:05:55 +05'30'

**S.Krishna Kumar
President & Company Secretary**

Encl.: As above

REGISTERED OFFICE:

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**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Sales Tax Revision / Reference No. 217/2020

M/s B.g.r. Energy Systems Limited, Having Its Registered Office At Nellore (A.p.) Having Its Branch Office At Village Undal, Tehsil Jhalarpatan, Distt. Jhalawar, Rajasthan Through Its Authorized Signatory, S. Prabhakar, S/o Sundaram Aged About 48 Years, R/o 443, Anna Salai, Teynampet, Chennai - 600018.

-----Petitioner

Versus

Assistant Commissioner, Anti Tax Evasion, Kota, Commercial Taxes Department, Dcm Rd, Chhatrapura, Dhanmandi, Kota, Rajasthan 324007

-----Respondent

Connected with

S.B. Sales Tax Revision / Reference No. 218/2020

M/s B.g.r. Energy Systems Limited, Having Its Registered Office At Nellore (A.p.) Having Its Branch Office At Village Undal, Tehsil Jhalarpatan, Distt. Jhalawar, Rajasthan Through Its Authorized Signatory, S. Prabhakar, S/o Sundaram Aged About 48 Years, R/o 443, Anna Salai, Teynampet, Chennai - 600018.

-----Petitioner

Versus

Assistant Commissioner, Anti Tax Evasion, Kota, Commercial Taxes Department, Dcm Rd, Chhatrapura, Dhanmandi, Kota, Rajasthan 324007

-----Respondent

S.B. Sales Tax Revision / Reference No. 219/2020

M/s B.g.r. Energy Systems Limited, Having Its Registered Office At Nellore (A.p.) Having Its Branch Office At Village Undal, Tehsil Jhalarpatan, Distt. Jhalawar, Rajasthan Through Its Authorized Signatory, S. Prabhakar, S/o Sundaram Aged About 48 Years, R/o 443, Anna Salai, Teynampet, Chennai - 600018.

-----Petitioner

Versus

Assistant Commissioner, Anti Tax Evasion, Kota, Commercial





Taxes Department, Dcm Rd, Chhatrapura, Dhanmandi, Kota,
Rajasthan 324007

----Respondent

S.B. Sales Tax Revision / Reference No. 155/2020

Assistant Commissioner, Anti-Evasion, Kota

----Petitioner

Versus

M/s B.g.r. Energy Systems Ltd., Nellore (A.p.)

----Respondent

S.B. Sales Tax Revision / Reference No. 156/2020

Assistant Commissioner, Anti-Evasion, Kota

----Petitioner

Versus

M/s B.g.r. Energy Systems Ltd., Nellore (A.p.)

----Respondent

S.B. Sales Tax Revision / Reference No. 157/2020

Assistant Commissioner, Anti-Evasion, Kota

----Petitioner

Versus

M/s B.g.r. Energy Systems Ltd., Nellore (A.p.)

----Respondent

For Petitioner(s) : Mr. Sanjay Jhanwar, Sr. Advocate
assisted by
Mr. Rahul Lakhwani
Mr. Wilson Joy

For Respondent(s) : Mr. M. S. Singhvi, AG assisted by
Mr. Sheetanshu Sharma
Mr. Darsh Pareek
Mr. Pranav Bhansali
Mr. Anupam Sharma, AO

HON'BLE MR. JUSTICE SAMEER JAIN



Order
सत्यमेव जयते

Reportable**Reserved on: 03/05/2023****Pronounced on: 21/12/2023**

1. The present cross Sales Tax Revisions / References (for short "STRs"), under Section 84 of the Rajasthan Value Added Tax Act, 2003 (for short "RVAT Act"), are filed being aggrieved by the order dated 19.03.2020 passed by the Larger Bench of the Rajasthan Tax Board, Ajmer (for short "RTB") in Appeal No. 1454-1456/2014/Kota, and were admitted on following questions of law:

In STR Nos. 217-219/2020, preferred by the assessee:-

"(i) Whether the learned Tax Board has legally erred in setting aside order passed by the DS(Appeals) and thereby holding that the contracts between BGR, Chennai and RRVUNL as a composite and indivisible contract which tantamounts to a works contract?

(ii) Whether the learned Tax Board has legally erred in holding that sale of Onshore Goods and Offshore Goods made by BGR-Chennai, BGR-Gurarat and BGR-Maharashtra to RRVUNL as intra-state sale by BGR-Rajasthan to RRVUNL and accordingly to be taxed under RVAT Act instead of CST?

(iii) Whether in facts and circumstances of the case, the Respondent Department having assessed the transaction under Entry tax as goods brought by RRVUNL into the state, is estopped from contending that the sale of the said goods was made by BGR, Rajasthan to RRVUNL in the state of Rajasthan?

(iv) Whether in the facts and circumstances of the case, the learned Tax Board has grossly erred in holding the State of Rajasthan can levy RVAT on a sale transaction when the assessment in relation to



the said sale transaction has already been completed under CST Act in the state of Tamil Nadu, Maharashtra and Gujarat?"

In STR Nos. 155-157/2020, preferred by the revenue:-

1. *Whether in the facts and circumstances of the case the larger bench of the Rajasthan Tax Board was justified in giving directions beyond the scope of the questions framed and referred to them?*
2. *Whether in the facts and circumstances of the case the larger bench of the Rajasthan Tax Board was justified in giving direction with regard to goods of special importance under Section 14 of the CST Act when no such claim was made by the assessee before the Assessing Officer as well as appellate authority?*
3. *Whether in the facts and circumstances of the case the larger bench of the Rajasthan Tax Board was justified in law in remanding the matter back with regard to goods of special importance under Section 14 of CST Act which were never transferred to the assessee in the form as mentioned under Section 14 and in such circumstances the benefit is not available?*
4. *Whether in the facts and circumstances of the case the larger bench of the Rajasthan Tax Board was justified in law in confirming deletion of penalty despite of the fact that the assessee has created documents to convert the local sale into interstate transaction with the intention to evade/avoid tax?"*

FACTS/BACKGROUND

2. The brief facts, leading to filing of the present STRs are as follows:

2.1. On 13.08.2007, Rajasthan Vidyut Utpadan Nigam Limited (for short "RVUNL") issued a notice inviting tender (for





short "NIT") for bid for setting up of two units of 600 MW each at Kalisindh Thermal Power Project (for short "Project") on Engineering, Procurement and Commissioning (for short "EPC") basis. The assessee ("BGRESL, Chennai") tendered a single bid against a single NIT to win this contract.

2.2. In pursuance thereof, and as desired by RVUNL, the assessee had to execute the following three separate contracts with RVUNL:

- (a) Contract No. 3832 for procurement and supply of material required from out of India (for short "Offshore Goods")
- (b) Contract No. 3833 for procurement and supply of material required from within India (for short "Onshore Goods")
- (c) Contract No. 3834 for providing services and doing civil work.

2.3. The cause and controversy in the matter arose on 19.01.2012, when a survey was conducted at the business premises of the assessee at Village Undal, Tehsil-Jhalrapatan, Distt. Jhalawar by the ACTO, Ward-II, Anti Evasion, Kota. The Surveying Authority, in furtherance of the survey, prepared a detailed inspection report dated 27.06.2012 to opine that breaking a composite and indivisible work contract into three contract is nothing but a colourable device to avoid the tax due under the RVAT Act. It was further opined that the sale made under the first and second contract are intra-state sales, i.e. sale within the State of Rajasthan and not inter-state sales under Section 3 read with Section 6 of Central Sales Tax Act, 1956 (for short "CST Act").



2.4. On the basis of survey and inspection report, the assessment order(s) were passed on 14.06.2013 wherein tax, interest, and penalty were levied on the assessee under the RVAT Act on 'deemed sale of goods' in execution of works contract.

2.5. The Appellate Authority, vide order dated 11.02.2014, quashed the assessment and demand orders and held that the sale made by the assessee is inter-state sale covered under Section 3 read with Section 6 of CST Act, and hence not exigible to state taxation.

2.6. The RTB, vide impugned order dated 19.03.2020, held that the contract between the parties was a composite and indivisible one and the disputed sale involved were intra-state sale and therefore affirmed the power of state government to levy VAT on the same.

2.7. The specific issues framed by the RTB were answered as under:

"Question 1)

- *Whether in the facts and circumstances of the case the contract between BGRESL and RUVN is a composite and indivisible one tantamounting to a Works Contract?*
- *Or there exist three separate contracts- One for supply of offshore goods, Second for supply of onshore goods and the Third for rendering of services and doing Civil Work?*
- *What difference does it make on tax liability of the respondent or applicability of provisions of the Local Act or the CST Act, if we treat the contract a single Works Contract or three separate contracts as above?*
- *Is making of three separate contracts attributable to the respondent? Did the respondent manage three separate contracts with RUVN only to avoid or evade tax? Could the respondent be*



held responsible for penalty under Section 61 of RVAT Act for this mode contracting?

Answer to Question 1)

- *The subject contracts between BGRESL and RVUN form an indivisible contract which tantamount to a Works Contract.*
- *There do not exist three separate contracts involving supply of goods and rendering of services.*
- *All the Constitutional and Statutory restrictions are applicable on 'deemed sale' of the goods involved in a Works Contract.*
- *Making of three separate contracts could not be attributed to the respondent and it could not be held liable for penalty under Section 61 of RVAT Act for reasons mentioned in this order.*

Question 2)

- *Whether in the facts and circumstances of the case, use of the plants and equipment imported by BGRESL from out of India in erection and installation of power plant for RVUN is a 'sale' or 'a deemed to be sale' as defined under Article 366(29A) (b) of the Constitution?*
- *Whether this 'sale' or 'deemed to be sale' is an inter-State sale effected by the respondent from Gujarat/Maharashtra or an intra-state sale of Rajasthan?*

Answer to Question 2)

- *Use of plants and equipment in erection and installation of power plants for RVUN by BGRESL under a contract constitute a 'deemed to be sale' defined under Article 366(29A)(b) of the Constitution and Section 2(35)(ii) of RVAT Act, 2003.*
- *Sale of offshore goods claimed by the respondent from Gujarat and Maharashtra is an intra-state sale of Rajasthan.*

Question 3)

- *Whether in the facts and circumstances of the case, the purchase of equipment and materials by the respondent from various vendors located in different States and resale of the same to*





RVUN is a sale as described under Clause (b) of Section 3 of CST Act?

- *In case the sale between BGRESL, Chennai and RVUN is a sale under clause (b) of Section 3, is it also a sale by BGRESL, Chennai exempted under Section 6(2) of CST Act?*
- *In case the sale does not fulfill requirements of Section 3(b) or Section 6(2) or both, is it taxable under the provisions of RVAT Act?*

Answer to Question 3)

- *Purchase of onshore goods and subsequent sale of the same to RVUN does not constitute a sale as described under clause (b) of Section 3 CST Act.*
- *The sale not qualifying under Section 3(b) automatically disqualified under Section 6(2) of CST Act. The subject sales are taxable under RVAT Act on being denuded the inter-State sale or export sale."*

2.8. However, considering that the goods were 'goods of special importance' as per Section 14 of CST Act, while setting aside the penalty, the RTB remanded the matter back to the assessing authority with the following directions:

"14. All the references made by the Learned Division Bench has been specifically answered by us as above. In view of this the D.B. will have nothing to decide or redecide in the matter afresh except to remand the case to the Assessing Officer for consideration of applicability of lower rate of tax on the sale of goods of special importance and reduced rate on other goods in light of Notification No. F.12(63)FD/TAX/2005-27 dated 28.4.2006. For the sake of early justice, instead of remitting the case to learned D.B., we set aside orders of the lower authorities and remand the cases back to the Assessing Officer to decide them afresh in the light of observation made in the judgment as under-

(i) All the purchases of goods of special importance be (as defined under Section 14 of CST Act) ascertained from



purchase invoices. Corresponding sales of these goods under all the three contracts be assessed to tax at the rate prescribed and applicable under Section 15 of CST Act in the relevant period.

(ii) The respondent should be given full opportunity to prove that claim of reduced rate of tax under F.12(63)FD/TAX/2005-27 dated 28.4.2006 like submission of any forms, certificates etc. with respect to all the sales made under the three contracts, and

(iii) The respondent will not be liable to pay any penalty u/s 61 of RVAT Act, 2003. But any unassessed tax found paid short or belated shall carry interest as per law.

(iv) The AO is directed to finalise the reassessment within three months' time from receipt of judgment."

3. The assessee has challenged the merits and validity of the entire RTB order and the revenue is aggrieved by the setting aside of penalty and direction of remand for recalculation of tax on concessional rate on goods of special importance. It is in this context that these STRs, which arises out of the common RTB order, were heard and are now being decided by way of this common order.

SUBMISSIONS OF ASSESSEE

4. Learned Senior Counsel, Mr. Sanjay Jhanwar, questioning the correctness of the impugned order of the RTB in its entirety, submitted as follows:

4.1. The first contention of the assessee is that the State/revenue has no jurisdiction to tax the subject sales under the RVAT Act as the same are inter-state sales covered under Section 3 of CST Act. In support of this contention, learned senior counsel made the following submissions:



(a) The bid/tended issued by RVUNL itself prescribed that three separate contracts would be awarded to the successful bidder, i.e., one for supply of off-shore goods; one for supply of on-shore goods; and one for civil works. The RRVUNL had prescribed the complete procedure to be followed by the petitioner while executing the contracts for supply of off-shore and on-shore goods. Even the vendors from whom the goods were to be procured in both these contracts were identified by the RRVUNL.

(b) That the above mentioned two supply contracts (both On-shore and off-shore) occasioned movement of goods from one state to another and were duly assessed to tax under the provisions of CST in the hands of petitioner's branches at Maharashtra, Gujarat, and Chennai. Further, the supply contracts were issued by RVUNL *inter alia* providing for cost of CST.

(c) That the title of the goods was transferred outside the state of Rajasthan, which is evident from Clause 31.3 of BID/NIT.

(d) That even for the sake of argument, it is assumed that the subject sales were made by the Rajasthan branch of the assessee, even in that case, by virtue of movement of goods from one state to another, the subject sales would be inter-state sale not liable to tax under the RVAT Act.

(e) Reliance is placed on Apex Court judgments of ***Hyderabad Engineering Vs. State of AP: (2011) 4 SCC 705***, ***English Electric Vs. Dy. CTO: (1976) 4 SCC 460*** and ***CDVAT Vs. ABB Ltd.: AIR 2016 SC 1901*** to submit that the only condition to be satisfied for the purpose of establishing inter-state sale under Section 3 of CST is movement of goods from one state



to another and any condition or qualification vis-à-vis the place of delivery, situs of sale, point of passing of property, time and place of raising invoice, intervention of agent, etc. are immaterial in case of inter-state sale. Reliance is also placed on **Oil India Ltd.**

Vs. Supdt. Of Taxes: (1975) 1 SCC 733, 20th Century Finance Vs. State of Maha.: AIR 2000 SC 2436, Thyseenkrupp Elevator Vs. ACCT: (2019) 60 GSTR 355 (Karn.), Asea Brown Boveri Vs. State of Kar.: 2014 (79) KarLJ 241, State of Kar. Vs. ECE Industries: (2006) 144 STC 605 (Karn.) and Sahney Steel and Press Works Vs. CTO: AIR 1985 SC 1754.

(f) That the Rajasthan branch of the assessee merely acted as a bailee and therefore handing over of goods by the Rajasthan branch to RVUNL can in no circumstance be considered a sale. Even otherwise, since the RTB has held the import of off-shore goods as 'seamless import', the same would be covered under Section 5(2) of CST Act and the petitioner would not be liable to pay any tax.

(g) That the off-shore goods were custom made for the RVUNL, which were only fit for use in the project. Further, the same were dispatched after inspection and issuance of Material Dispatch Clearance Certificate (for short "MDCC") by RVUNL which further establishes that the movement of the goods occasioned from outside of Rajasthan into the State of Rajasthan and the title thereto was also transferred to RVUNL during this transfer.

4.2. The second contention of the assessee is that even in case of works contract, the State/revenue does not have the



power to tax a sale in terms of Article 366(29-A)(b) of the Constitution of India, if such a sale is an inter-state sale. In support of this contention, learned senior counsel for the assessee made the following submissions:

(a) That Article 366(29-A)(b) of the Constitution of India does not provide for tax on the whole of works contract. In works contract, assessee is liable to pay service tax on service element and sales tax on goods deemed to be transferred. However, what is ultimately being taxed by the State is the 'sale or purchase of goods' simpliciter. Prior to insertion of Article 366(29-A)(b) into the Constitution of India by way of 46th Constitutional Amendment, state government did not have power to tax the 'sale of goods' elements involved in a works contract. Article 366(29-A)(b) of the Constitution of India merely empowers the state government to separate the sale of goods element involved in a works contract and to levy tax on the same. Article 366(29-A)(b) of the Constitution of India does not provide for levy of tax on whole of works contract.

(c) A works contract is no exception to inter-state sales. It has been held in **Builders' Association of India vs. Union of India: (1989) 2 SCC 645** that Article 366(29-A)(b) of the Constitution of India only empowers the state to tax sale of goods involved in works contract but all the Constitutional restrictions under Article 286 and Entry 92A of Union List would apply on the same. Therefore, revenue has no power to tax sale of goods involved in execution of works contract as the same have been supplied during inter-state sales. Reliance is placed on Hon'ble



Supreme Court judgments of **Gannon Dunkerley and Co. Vs. State of Rajasthan: (1993) 1 SCC 364, Indure Ltd. vs. CTO (2010) 9 SCC 461**, judgments of Kerala High Court in **State of Kerela vs. M/s Metso Mineral India Pvt Ltd. (O.T. Rev. No. 143/2017; decided on 19.07.2020)** and **Swaraj Equipments (P) Ltd. vs. State of Kerela (S.T. Rev. No. 49/2013 and O.T. Rev Nos. 62/2013, 73/2013; decided on 13.07.2018)**, judgments of High Court of Telangana and Andhra Pradesh in **Engineers India Ltd. vs. State of A.P. & Ors.: 2019 (2) ALT 168**, and **L&T Ltd. vs. Commissioner of Commercial Taxes: (2003) 132 STC 272 (AP)** and judgment of Gauhati High Court in **Projects and Services Centre v. State of Tripura: 1990 SCC OnLine Gau 191**.

(d) That RVUNL may have deducted works contract TDS on amount of all the three contracts combined, however, in the assessment order VAT has been levied only on the value of the goods. It was only as a matter of procedure that RVUNL deducted works contract TDS in accordance with provisions of Section 20 of RVAT Act read with Rule 40 of RVAT Rules on the payment made to the assessee in respect of the supply contracts. However, the assessee never admitted liability of said TDS in its returns. On the other hand, since no tax on account of works contract was liable to be paid, the assessee later on claimed refund on the entire works contract TDS amount with respect to supply of off-shore and on-shore goods. The deduction of TDS cannot change the nature of inter-state sales made by the assessee.



(e) That RVUNL itself had issued three separate contracts and the contract for supply of goods were issued considering the liability under the CST Act and RVUNL itself issued C-Forms and Form VAT-47, which evidences that the supply of goods was inter-state. Without prejudice to his arguments on merits, it is submitted that had RVUNL prescribed in the bid or otherwise directed the assessee to pay tax considering the three separate contract as one single works contract supplying goods within the state of Rajasthan and chargeable to RVAT, the assessee would have opted to pay RVAT at a concessional rate under the works contract exemption scheme during the relevant period. On the other hand, the assessee merely followed the manner and procedure prescribed by RVUNL for execution of the three contracts and has paid far greater amount of tax against CST sales in respect of supply of off-shore and on-shore goods.

(f) That RTB gravely erred in not considering that power to tax sale of goods during execution of works contract is available with the State of Rajasthan under Article 246 read with Entry 54 of List II just like any other transaction of sale or purchase taking place inside a state. In other words, the existence of a works contract does not change the fact that what is ultimately being taxed is sale and purchase of goods, which is subject to provisions of Article 286, Entry 92A of List-I of Constitution of India and the CST Act.

(g) That this Court had struck down the provision in the erstwhile Rajasthan Sales Tax Act, 1994 which attempted to bring tax on inter-state sale of goods involved in the execution of works



contract in the case of **Triveni Engineering and Industries Ltd. v. State: (2001) 3 RLW 1752.**

4.3. The third contention of the assessee is that because the subject sales have been assessed to tax under the CST Act, the same cannot be taxed again under the RVAT Act. In support of this contention, learned senior counsel for the assessee made the following submissions:

(a) That it is undisputed in the present case that the subject sales under both the supply contract have been assessed to tax under the CST Act in the hands of the assessee in respective states of Tamil Nadi, Maharashtra and Gujarat. The said fact has also been recorded in the impugned RTB order. However, disregarding the same without any cogent reason, the subject sales have been subjected to tax again under the RVAT Act, which is constitutionally impermissible. Reliance is placed on Hon'ble Supreme Court judgment of **Ashok Leyland Ltd. vs. State of Tamil Nadu and Ors.: AIR 2004 SC 2836.**

(b) That revenue is taking contradictory stand in the matter as the revenue had itself issued Form-C under Section 8 of CST to RVUNL and has also accepted Form VAT-47 in terms of Rule 53 of RVAT Rules from RVUNL in respect to subject sales. It is contended that issuance of these forms is *prima facie* evidence of the fact that the revenue has held RVUNL to be owner of the goods which have been brought from outside the state of Rajasthan.

4.4. The fourth contention of the assessee is that since the subject sales have already been assessed to tax under the



Rajasthan Tax on Entry of Goods Into Local Area Act, 1999 (for short "Entry Tax Act") in the hands of RVUNL, the same cannot be taxed again under RVAT Act at the hands of assessee. It is further contended that the fact that the revenue collected entry tax from RVUNL goes to show that the revenue had accepted RVUNL as the owner of the goods and also the fact that the goods have been sold to RVUNL in the course of inter-state trade. Further, Notification No. F.12(63)FD/Tax/2005-160 dated 31.03.2006, issued by Revenue itself, provided exemption from entry tax if tax under the RVAT Act has been paid. Thus, entry tax and VAT are mutually exclusive and since entry tax on subject sales has already been paid by RVUNL, it is a revenue neutral situation, hence, RVAT cannot be demanded from the petitioner.

4.5. The fifth contention of the assessee is that the assessee had duly rebutted and clarified the alleged discrepancies or irregularities pointed out by the assessing officer based on which the impugned assessment order was passed. Learned Senior Counsel for the assessee submits that the sole ground of the assessing authority in rejecting the inter-state sales was that there were several discrepancies in the document transferring title of goods and that the invoices were raised late after the goods had already reached the Power Project site. However, the rebuttal and clarification of the assessee was found satisfactory by the Appellate Authority and the same has not been controverted by the RTB either. The Assessing Authority imposed penalty on the basis of only one transaction alleged to be an intra-state sale from Bhiwadi, Rajasthan. The allegation is erroneous because as per



the contract issued by RVUNL the said supply was to be made from a vendor situated out of Rajasthan and was accordingly procured by the Petitioner from Himachal Pradesh, and the Assessing Authority has erroneously relied upon one inspection report which does not pertain to said supply, which is evident from the documents on record itself. Even otherwise, all the document, nature of business and explanation is on record, suggesting that there is no illegality or fabrication or anti-dating of documents. At the best, revenue may plead that the documents were not to the satisfaction. However, that does not alter the 'substantive' character of sales as the principle of 'Substantive Form' is well settled.

4.6. The sixth contention of assessee is that it is unfair for the State to first mandate the charging of CST on the supply of offshore and onshore goods and charging of RVAT only on local supplies while floating the tender and executing the contracts and thereafter take a somersault through their another organ by charging RVAT even on offshore and onshore goods despite observance of the complete procedure prescribed in the contract by the assessee.

4.7. The seventh contention of the assessee is that RTB was correct in not imposing any penalty of the petitioner in the present case as the issue involved is of pure question of interpretation of provisions; as also since RVUNL, a State Government entity, is involved in the transactions. It would be wrong to allege that there was any malafide on the part of the assessee as there is no suppression by the assessee. Reliance is placed on **The**



**Commissioner, Customs and Central Excise, Hyderabad IV
vs. National Remote Sensing Agency: 2021 [50] G.S.T.L.
465 and Alpha Associates vs. Deputy Commissioner of
Income Tax: MANU/MH/1369/1999.**

SUBMISSIONS OF REVENUE

5. Learned Advocate General, Mr. M.S. Singhvi, appearing for the Revenue, made the following submissions:

5.1. That all three contracts are single, composite, indivisible works contract taxable under RVAT Act. The division of the contract into three was merely done for the convenience of making payments. Learned AG has extensively highlighted various clauses of the contract to submit that the same are composite and indivisible works contract. Further, the RTB, which is the last fact-finding authority, has also confirmed the contract to be a composite and indivisible one after detailed examination of the contract in question in light of settled position of law and in view of several Apex Court judgments. The findings of the RTB from para 7.11 to para 7.14, being infallible, calls for no interference.

5.2. That as per terms and contract relating to works contract, complete unit was required to be transferred to RVUNL. It is submitted that clauses of 'Final Handing Over', 'Project Schedule', 'Liquidated Damages', 'Warranty', 'Insurance' and 'Completion of Contract' clearly reveal that under present works contract, the complete unit would be transferred to the RVUNL by assessee and there is no individual handing over/supply of goods by assessee to RVUNL. Further, as per the Sale of Goods Act, 1930 (for short "SOG Act"), the goods are said to be transferred only



when they are put to a deliverable state by the contractor as per terms and conditions of contract and at that point the incidence of sale took place for the purpose of works contract. Learned AG has also highlighted the finding of RTB at para 9.10 and para 9.11 to submit that issuance of MDCC by RVUNL only confirmed the specification of the goods to be used in the execution of the works contract. Mere issuance of MDCC, by no conceivable means, can be said to be transfer of title or ownership, as the assessee was still required to deliver the goods and put them in a deliverable state.

5.3. That the terms and conditions of contract are relevant for determination of the intention of the parties. In the case in hand, RVUNL issued the single NIT for erection of the thermal power plant. The sale in the present case is not of individual goods but is of the thermal power plant constructed and installed by the assessee. It is submitted that in order to attract CST Act, the condition precedent is that it should be sale in the course of inter-state trade or commerce. The goods which were used in the installation of plant shall fall within the expression 'deemed to be sale of those goods by the person executing works contract'. It is further submitted that installation of thermal power plant and sale thereof in the state of Rajasthan cannot be termed as sale in the course of inter-state trade or commerce. The erection of the plant can only be termed as an intra-state transaction and hence property in goods used in such erection, whether as goods or in some other form, would constitute an intra-state sale within the meaning of Article 366(29-A) of the Constitution of India and



accordingly will be subject to RVAT Act. It is further submitted that in the present case, the goods claimed by the assessee to be part of inter-state sale were not sold to the RVUNL as goods but utilized in erection of thermal power plant. Hence, such transactions cannot fall within the definition of inter-state sales. It is also contended that Article 286 of Constitution of India does not apply in the present case because prior to completion and transfer of plant to RVUNL, any part incorporated in plant could not become saleable commodity under the contract. The said fact makes the judgment of **CDVAT vs. ABB Ltd. (supra)**, relied upon by the assessee, distinguishable and inapplicable. Further, in support of his contentions, learned AG has placed strong reliance on **Gannon Dunkerley and Co. & Ors. vs. State of Rajasthan and Ors.: (1993) 1 SCC 364, Hindustan Shipyard Ltd. vs. State of Andhra Pradesh: (2000) 6 SCC 579, BSNL vs Union of India: (2006) 3 SCC 1, Larsen and Toubro Limited & Ors. vs. State of Karnataka & Ors.: (2014) 1 SCC 708, Kone Elevator India Pvt. Ltd. vs. State of Tamil Nadu & Ors.: (2014) 7 SCC 1, State of U.P. & Ors. vs. P.N.C. Construction Co. Ltd. & Ors.: (2007) 7 SCC 320, and K. Raheja Development Corporation vs. State of Karnataka: (2005) 5 SCC 162.**

5.4. That none of the judgments relied upon by the assessee deal with a single, composite, indivisible EPC works contract wherein there is a transfer of complete plant and therefore none of those judgments are applicable in the instant case.





5.5. On the issue of setting aside of penalty by the RTB, learned AG submitted that the assessee has wrongly exhibited the subject sales as inter-state sales and clandestinely evaded the applicable taxes and by fabricating parallel and antedated invoices. Learned AG has also taken this Court through the assessment order wherein several discrepancies are pointed out, which have also been affirmed in para 8.11 of the RTB order. Learned AG has highlighted about 137 invoices totaling about Rs. 785 crores, in which serious discrepancies were found. Therefore, it is contended that the penalty was wrongly set aside by the RTB. Reliance is placed on **State of Gujarat and Ors. vs. Saw Pipes Ltd. (Neutral Citation: 2023/INSC/376): AIR 2023 SC 2113** and **R.S. Joshi and Ors. vs. Ajit Mills Limited and Ors.: (1977) 4 SCC 98.**

5.6. That the directions issued by the RTB of remanding the matter back for afresh consideration was beyond the scope of the pleadings and was never argued and therefore the said direction is erroneous. Reliance in this regard is placed on **Trojan and Co. Ltd. vs. N.N. Nagappa Chettiar: AIR 1953 SC 235** and **Bharat Amratlal Kothari vs. Dosukhan Samadkhan Sindhi & Ors.: AIR 2010 SC 475.**

5.7. Reliance is also placed on **Xerox Modicorp Limited vs. State of Karnataka: (2005) 7 SCC 380**, **CCT Kerala vs. K.T.C. Automobiles: (2016) 4 SCC 82**, and **Arihant Udhog vs. State of Rajasthan and Ors.: (2017) 8 SCC 220.**

ANALYSIS



6. Heard the arguments advanced by learned counsels appearing for the respective sides, thoroughly scanned record of present STRs, and carefully considered the judgments cited by the learned counsels.

7. The contention of the Revenue is that the contract was split into three parts merely for the convenience of payment and as such, it was a single, composite and indivisible works contract taxable under the RVAT Act. On the other hand, the contention of the assessee is that even if it was a composite and indivisible works contract, it would not alter the taxability of the goods involved in execution of the works contract because the subject sales were inter-state sale not eligible to state taxation. Before proceedings to the merits of the case, it is necessary to recapitulate the background of the case.

The case brief, for the sake of brevity, is reproduced in a tabular format as below:

Appeal filed against	RTB Order dated 19.03.2020 in Appeal No. 1454/2014/Kota, 1455/2014/Kota and 1456/2014/Kota					
Demand in the matter	STR No.	Year	Particulars	Amount	Total	
	219	2009-10	Tax	98,66,25,583	1,42,07,40,840	
			Interest	43,41,15,527		
	217	2010-11	Tax	95,41,31,448	1,18,57,45,181	
			Interest	23,16,13,733		
	218	2011-12	Tax	43,33,65,939	45,14,42,695	
			Interest	1,80,76,756		
	Total:				305,79,38,716	
	Amount already deposited	219	2009-10			22,22,42,238
		217	2010-11			33,81,48,386
	218				36,10,58,915	



		2011-12		
		Total:		92,14,49,539 (approx. 30% of demand in the matter)
Lower Authority order		Assessment order	Appellate Order	
	219	2009-10	28.09.2012	11.02.2014
	217	2010-11	28.10.2013	03.03.2014
	218	2011-12	28.10.2013	12.03.2014

The decision of the lower authorities are summarized as under:

Assessment Order	<ol style="list-style-type: none"> 1. The assessee has broken a composite and indivisible works contract into three contracts to avoid payment of RVAT. 2. The sale of goods claimed by the assessee to be from Maharashtra, Gujarat, and Tamil Nadu (i.e. inter-state sale) are intra-state sale and exemption claimed from payment of VAT under Section 3(a) and 3(b) read with Section 6(2) of CST Act on such sales is incorrect. 3. Penalty was imposed
First Appellate Order	<ol style="list-style-type: none"> 1. Sale of off-shore goods by assessee from Gujarat and Maharashtra is covered under Section 3(a) of CST Act. 2. Sale of on-shore goods by assessee from Chennai is covered under Section 3(b) of CST Act and exempted under Section 6(b) of CST Act and not taxable. 3. Penalty was set aside.
RTB Order	<ol style="list-style-type: none"> 1. Sale of off-shore and on-shore goods is intra-state sale as per Section 4(2) of CST Act on which RVAT is leviable. 2. No penalty was imposed. 3. Matter remanded back to assessing officer with direction pertaining to benefit of notification dated 28.04.2006 for FY 2009-10 and rate of tax on goods of special importance.

8. The relevant provisions of law, which are required to be considered for adjudication of this case, are reproduced as under:

"Article 286 of Constitution of India - Restrictions as to imposition of tax on the sale or purchase of goods"



(1) No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both, where such supply takes place

(a) outside the State; or

(b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a supply of goods or of services or both in any of the ways mentioned in clause (1).

Article 366(29A) of Constitution of India:

(29A) 'tax on the sale or purchase of goods' includes-

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

Entry 92A of List I-Union List of Seventh Schedule of Constitution of India:





92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

Entry 54 of List II-State List of Seventh Schedule of Constitution of India:

54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.

Section 2(35)(i) of RVAT Act:

(35) "sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes—

(i) a transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration

Section 2(44) of RVAT Act:

(44) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;

Section 2(g)(i)(ii) of CST Act:

(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,

(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;



(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

Section 2(ja) of CST Act:

(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;

Section 3 of CST Act:

Section 3- When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1 — Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2 — Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

Section 4 of CST Act:

Section 4 - When is a sale or purchase of goods said to take place outside a State.-

(1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or



purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation — Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.”

9. As per the provisions of law quoted above, the State has power to levy sales tax/VAT on 'deemed sale of goods' used in execution of works contract. In works contract, the assessee is liable to pay service tax on service element and sales tax on goods transferred. The bone of contention is whether the sale of goods involved in the present case were inter-state sales or intra-state sales. To ascertain that, we must first determine the nature of the transaction. As per settled position of law, the terms and conditions of the contract are relevant for determining the intention of parties. In this regard, we may note the relevant extracts of some judgments on the issue.

9.1. In the case of **Gannon Dunkerley (supra)**, the Apex Court observed as under:

"40. ...We do not propose to go into this controversy because the question whether a deemed sale resulting from transfer of property in goods involved in the execution of a particular works contract amounts to a sale in the course of inter-State





trade or commerce under Section 3 of the Central Sales Tax Act or an outside sale under Section 4 of the Central Sales Tax Act or a sale in the course of import under Section 5 of the Central Sales Tax Act **has to be decided in the light of the particular terms of the work contract and it cannot be decided in the abstract.** As at present advised, we are not in a position to say that in no case, can there be a sale in the course of inter-State trade or commerce or an outside sale or a sale in the course of import in respect of a deemed sale resulting from transfer of property in goods involved in the execution of a works contract falling within the ambit of sub-clause (b) of clause (29-A) of Article 366 of the Constitution.”

9.2. In the case of **Hindustan Shipyard (supra)**, the Apex Court observed as under:

“6. ...No straitjacket formula can be made available nor can such quick-witted tests devised as would be infallible. It is all a question of determining the intention of the parties by culling out the same on an overall reading of the several terms and conditions of a contract. In *State of Gujarat (CST) v. Variety Body Builders*: (1976) 3 SCC 500 this Court observed that there is no standard formula by which one can distinguish a contract of sale from a contract for work and labour. There may be many common features in both the contracts, some neutral in a particular contract, and yet certain clinching terms in a given case may fortify a conclusion one way or the other. **It will depend upon the facts and circumstances of each case. The question is not always easy and has for all times vexed jurists all over.**

27. **The recitals of the contract may also be read in the light of the few provisions of Chapter III of the Sale of Goods Act. In a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Sections 20 to 24 contain rules for ascertaining the intention of the parties in this regard. When something remains to be done on the date of the contract to bring the specific goods in a**





deliverable state the property does not pass until such thing is done and brought to the notice of the buyer."

9.3. In the case of **BSNL vs. UOI (supra)**, the Apex Court observed as under:

"The court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, as being the subject-matter of sale or purchase. In arriving at a conclusion the court would have to approach the matter from the point of view of a reasonable person of average intelligence."

10. Therefore, to ascertain the nature of the contract, this Court is required to scrutinize the terms and conditions mentioned therein. The contract is on record and the relevant terms of the contract are also reproduced in the RTB Order dated 19.03.2020 from paras 7.4 to 7.10. However, for the sake of convenience, and to avoid repetition, some of the relevant clauses of the contract are reproduced as under:

"CROSS FALL BREACH

(Contractor. Instructions To Bidder (ITB)- Clause 22

General Conditions of Contract (GCC)- Clause 31.1

1. *All the three contracts will contain a cross fall breach clause specifying that breach of one contract will constitute breach of the other.*

2. Article 3.7 of all three contracts

It is expressly agreed to by the EPC contractor that notwithstanding the fact that the contract is termed as engineering procurement and construction (EPC) contract or indicates the break-up of the contract consideration, or awarded three contracts for convenience of operation. It is infact one composite Contract on single source responsibility basis and the contractor is bound to perform the total contract in its entirety and non-performance of any part of portion of



the contract shall be deemed to be a breach of the entire contract.

CONTRACT PRICE

The total Contract price for the entire scope of this contract as detailed in letter of intent is Rs. 4900.06 crores. This shall be firm till completion of the contract.

TAX DEDUCTED AT SOURCE

As regards the Indian Income Tax, surcharge on Income Tax, any cess thereof and any other similar tax etc, the RVUN shall not bear any liability whatsoever, irrespective of the mode of contracting. The contractor shall be liable and responsible for payment of all such taxes, if attracted under the provisions of law. The Works Contract Tax and Income Tax will be deducted at source on composite value (combined value of all the three contract as described above) of turnkey EPC Contract. If the State or Central Govt. brings any other tax deduction at source into effect, during the validity of the Contract then the same shall be deducted at source as per the prevailing rules.

SCOPE OF WORK

clause no. 5 of contract no. 3832, clause 11 of contract no. 3833 and clause 11 of contract 3834 having following conditions which are exactly similar to each other and are as follows-

CONTRACT PERFORMANCE GURANTEE

The clause No. 12 of contract no. 3832, clause 11 of contract no. 3833 and clause 11 of contract 3834 have following conditions which are exactly similar to each other and are as follows-

LIQUIDATED DAMAGES

1) FOR DELAY IN COMPLETION:

That the liquidated damages are on the total contract price. If there is any shortfall due to any reason related to any of the contracts, liquidated damages will be as per total contract





price of all three contracts. This clause again proves that contracts are not independent contracts to sale, but a single, composite and indivisible works contract.

B. Terms and conditions relating to works contract where complete units will be transferred.

1. " FINAL HANDING OVER" shall mean the Owner's written acceptance of the works performed under the contract, after successful completion of Performance Tests. (GCC Clause - 3.32)

2. PROJECT SCHEDULE clause under the three contracts which provides that the project has to be commissioned within 39 months for Unit 1 and 42 months for Unit 2. (Clause 11 in Contract No. 3832 and Clause 10 in Contract No. 3853.)

3. LIQUIDATED DAMAGES provides that if the contractor fails to successfully hand over the unit/s within stipulated period indicated in this document then he is liable for Liquidated Damages. (Clause 12 in Contract No. 3832 and Clause 11 in Contract No. 3832)

WARRANTY-

Clause 28 in Contract no. 3832 and Clause 24 in Contract no. 3832.

As stipulated in clause no. 37, section-II of Vol.I of Specification, The Contractor shall warrant the equipment to be new and in accordance with the contract documents and free from defects in design, material and workmanship for a period of twelve (12) calendar months commencing immediately upon Final Taking Over of Unit#1 and Unit#2 respectively....

INSURANCE-Clause 20. of GCC

The risks that are to be covered under the insurance shall include, but not be limited to, the loss or damage in transit, storage, erection and commissioning, theft, pilferage, riot, civil commotion, weather conditions, accidents of all kinds, fire, war, risk etc.

COMPLETION OF CONTRACT – CLAUSE 32 OF GCC

32.2 The conditions for "Final Completion" are as follows:-





- a) *Taking-over of the Unit/plant as per SCC shall have occurred;*
- b) *A performance certificate to be issued after the completion of performance Guarantee Tests, shall have been issued.*
- c) *The Contractor shall have provided all outstanding final drawings and documentation as per Contract."*

Further, the project import certificated letter dated 06.07.2009 issued by the Chief Engineer (TD) of RVUNL and endorsed by the Secretary – Energy Department, Government of Rajasthan is also reproduced as under:

"No. RVUN/CE(TD)/SE(TD-1)/TDM-IV/F. /D. 2236

Jaipur, dated 6/7/2009

To

The Commissioner of Customs

Customs House

Mundra PORT

*Sub: Project Authority Certificate for Equipment required for setting up of 2*600 MW Kalisindh Thermal Power Project on EPC basis at Jhalawar.*

Ref: P.O.No. RVUNL / ACE(TD) / XEN(TDM-V) / TNKS-1 /

D.3832 Dt.13.10.2008 (OFFSHORE)

Dear Sir,.

*This is to inform you that we are setting up a 2*600 MW Kalisindh Thermal Power Project at Jhalawar District, Rajasthan.*

We have placed the purchase order No. RVUNL/ACE(TD)/XEN(TDM-V)/TNKS-1/D.3832 Dt. 13.10.2008

*(OFFSHORE) on M/s BGR Energy Systems Limited, 443, Anna Salai, Teynampet, Cheenai-600018 **for implementation of***

*2*600 MW Kalisindh Thermal Power Project on Engineering, Procurement and Construction (EPC) basis.*

M/s BGR Energy Systems Limited have proposed to import equipments, materials, spare parts, special tools & tackles and essentials mandatory spares etc. for the above project as per

*Annexure-A enclosed. **The total CIF value** of the consignments to be imported is USD 40,50,00,000.*



*It is hereby certified that the goods as per enclosed Annexure-A (Appendix A0 to A9) are essentially required **for the supply and erection of the equipment to this project** and qualify for grant of duty concession under Project Import Chapter 98.01 of Customs Tariff read with SI.No. 399(IV) of Customs Notification No. 21/2002 dt. 01.03.2002 as amended from time to time. We confirm that the benefit of concession in customs duty are passed on to Rajasthan Rajya Vidyut Utpadam Nigam Limited by M/s BGR Energy Systems Limited. The recommendation of the Secretary (Energy), Government of Rajasthan, Jaipur is endorsed in the Import List.*

Encl. As above

Yours faithfully

*(R.K. Luhadia)
Chief Engineer(TD)*

The State Government recommends the grant of customs duty concessions under project import in terms of chapter 98.01 of Customs Tariff read with SI. No. 399 of (iv) of the General Exemption No. 122 vide customs notifications No. CN. 21/2002 dt.01.03.2002, as amended from time to time for importing equipment for the total CIF value of USD 40,50,00,000 as per Annexure-A, Annexure-A1 and corresponding Appendices duly certified by us.

*Secretary – Energy
Government of Rajasthan”*

11. From a careful analysis of the terms and conditions of the contract(s) in light of the aforementioned Apex Court judgments, the following points emerge:

(a) A unified bid was invited through a single NIT by RVUNL on EPC basis for erection of the thermal power project, which included both supply of goods as well as services.



(b) Bidders had to quote their proposal in lump-sum for the entire scope of work.

(c) The bid was awarded to the assessee at approximately Rs. 4900.06 crores for the entirety of the project.

(d) All three contracts contained a cross fall breach clause specifying that breach of one contract would constitute breach of others, giving a right to the RVUNL to terminate the other contracts also at the cost and risk of the contractor/assessee. This is quite enough to counter the contention of the assessee that the three contracts were independent and separate.

(e) Award of three contracts could not and did not dilute the responsibility of the assessee to successfully complete the erection of the thermal power project as per the specification on single source responsibility basis.

(f) There was a provision in the contract itself about tax deduction at source (for short "TDS") and accordingly TDS on Works Contract Tax was also deducted on composite value of the turnkey EPC Contract.

(g) The letter dated 06.07.2009 also indicates that the goods were to be imported on CIF value for use in erection of the power project.

(h) The separation of the contract into three parts was merely done for the convenience of payment and notwithstanding the said break-up of contract, it was a composite and indivisible works contract on a turnkey basis.

12. The relevant portion of the RTB order on this particular issue is reproduced as under:



"7.11 As evident from the stipulations in Contract Documents a unified Bid was invited through a single NIT by RVUN for Engineering, Procurement and Construction of coal based Kalisindh Thermal Power Project (ITB-1). Scope of work included complete activities, services and supply of goods (ITB-5, GCC-13.2). Bidders had to quote in their proposals lumpsum price for the entire scope of work (ITB-18, GCC-16.1). Provisions for TDS of Works Contract Tax were there. (ITB-18, GCC-16.2.7). All the supplies were acceptable ex-works and FOR site only (ITB-18, GCC-13.2). Three contracts containing cross fall breach clause were to be executed with the successful bidder (ITB-22, GCC-31.1). The contract performance Guarantee, Equipment Performance Guarantee, Liquidated Damages etc. were to be calculated on the gross value of the three contracts. (ITB-24, 25; GCC-22.1). "Plants and Equipment" were to mean permanent plant, equipment, machinery and things of all kinds to be provided and incorporated under the contract (GCC-3.44). "Works" were to mean and include furnishing of equipment, labour and services, transport, handling, unloading and storage at site, Civil construction, erections, commissioning etc. (GCC-3.57). "Final take over" was to occur when all supplies and services were achieved. (GCC-3.64). The bidder contractors were expected to be qualified and experienced in the EPC of electric generating facilities (GCC-6-). Equipments not specifically mentioned but required for satisfactory completion of the Project on turnkey basis were also to be supplied (GCC-13.2, 13.3). The contractor was responsible for taking insurance for all risks to equipment and material upto final taking over (GCC-20). The contractor was obligated to undertake replacement of damaged equipment free of cost. (GCC-20, 21, 21.2). Proportionate price of the contract was to be paid to the contractor in case of termination of the contract prior to its completion (GCC-26.4). It was clearly understood by the parties that the total consideration for the contract price was broken into various components for the convenience of progressive payment only (CC-31.6). Progressive payments were to be made on the basis of work executed at site and





equipments brought on to the site by the contractor (GCC-45.4.2)

7.12 Before clinching the issue we would like to have a view of what Hon'ble Supreme Court has said while deciding the nature of a Turnkey Project or a Composite Contract –

11. By way of Letter of Award dated 16.08.1988, N.T.P.C awarded two contracts to the Company for performing the work of erection of aforesaid plant on Turnkey Basis. Even though, two contracts were entered into between the parties but in nutshell it was only one contract for the simple reason that N.T.P.C kept a right with it with regard to cross fall breach clause meaning thereby that default in one contract would tantamount to default in another and whole contract was liable to be cancelled." *Indure Ltd. Vs. CTO (2010) 9 SCC 461 (SC)*

64. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both..... But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved..... But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel...."*Kone Elevator India Pvt. Ltd. Vs. State of Tamil Nadu (2014) 71 VST 1 (SC)*

7.13 Out of the three subject contracts, contract no. 3834 is seemingly admitted to be a Works Contract by the parties. Construction of the foundations, bases etc. for the ensuing Power Plant with other related Civil construction was within the scope of this contract. The parties already agreed to deduct Works Contract Tax @2-25% of the payment made





against execution of this contract. This contract in isolation of the other two contracts is a works contract in itself and the respondent has admitted and discharged the tax liability voluntarily on the goods involved in execution of this contract. It is surprising on the part of the respondent that the initial work (Construction of foundations civil work etc.) and the final work (erection and installation of the materials supplied under contract no. 3832 & 3233) are in the pervue of contract no. 3834 but the work in between i.e. (procurement of plants and equipments) is not.

7.14 That the contracts were awarded to the respondent on EPC contract basis / Single Source Responsibility basis / Turnkey basis (GCC-13.2 & opening of C-3832, 3833 & 3834). Looking to the intention of the parties and stipulations in the contracts the contracts for supply and service had to be awarded to the same party. Apart from the single NIT and unified BID, the ITB the GCC and the SCC etc. were uniformly applicable to all the Contracts. The respondent company was awarded the contract for it's expertise in erection and installation of Power Plants and not for its supplying, transporting, loading, unloading skills of the goods. Evidently the intention of the parties was only to execute work with material supplied by the respondent. Contractual clauses referred in the forgoing paras are enough to demonstrate that the form of the contracts is indicative of three separate contracts but in substance they are one indivisible works contract for supply of material and erection and installation of equipments. They are so intertwined and interdependent that we are unable to accept them as separate and independent contracts and unhesitatingly hold them an indivisible Works Contract."

13. In the considered opinion of this Court, the RTB, after careful consideration of the entire record, had rightly concluded the contract to be a composite and indivisible EPC works contract on turnkey basis. The observation by the RTB reproduced above,



are in content and form, flawless and thus this Court has no hesitation in affirming the view taken by RTB in this regard.

14. Now what remains to be seen is whether the subject sale of the goods were inter-state sales or intra-state sales. The assessee contends that the off-shore sales were inter-state sales covered under Section 3(a) of CST Act as the identified goods were supplied by the Gujarat and Maharashtra branch of the assessee directly to RVUNL and the Rajasthan branch of the assessee merely acted as a bailee. Similarly, the assessee contends that the sale of on-shore goods were also inter-state sales covered under Section 3(b) read with Section 6(2) of CST Act. On the contrary, the Revenue contends that the subject sales were 'deemed sale' under the works contract and liable to be taxed under RVAT Act. To resolve this controversy, this Court must determine the nature of sale and when the sale was effected. For this, recourse may be taken to SOG Act, the relevant provisions of which are reproduced as under:

"Section 2 - Definitions

(3) goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them;

(6) "future goods" means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale;

(14) "specific goods" means goods identified and agreed upon at the time a contract of sale is made;

Section 4. Sale and agreement to sell

(1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods





to the buyer for a price. There may be a contract of sale between one part-owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to, sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

Section 19- Property passes when intended to pass

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Section 20. Specific goods in a deliverable state

Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

Section 21-Specific goods to be put into a deliverable state

Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof.





Section 22- Specific goods in a deliverable state, when the seller has to do anything thereto in order to ascertain price
Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof

Section 26- Risk prima facie passes with property

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not: Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault: Provided also that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party."

15. As already discussed above, the contract was a composite and indivisible EPC works contract. In the simplest of terms, RVUNL was to receive the final thermal power project which was to be erected by the assessee for which the assessee was to receive a fixed consideration. It is not a case where there was sale of individual goods to the RVUNL. Though the goods were specially designed to be used in the power project, the point of transfer of such goods is what is relevant for determining whether the title to the goods transferred to RVUNL during movement of goods from one state to another. The assessee contends that the title to the goods transferred to the assessee outside the State of





Rajasthan, upon issuance of MDCC or other like documents. However, the issuance of MDCC is not determinative of transfer of title. MDCC merely identifies the specification of the goods to be used in the execution of works contract. The liability to transport these goods and the risk involved therein was with the assessee. Further, the assessee was required to transfer the power project in operational state. In the case in hand, the pre-dispatch inspection and issuance of MDCC, in view of terms of contract, did not serve the purpose of transfer of goods. This unequivocally establishes that there was no transfer of title of goods after their inspection and/or issuance of MDCC or any like document.

16. The intent of the parties is quite clear. The clauses of 'Final Handing Over', 'Project Schedule', 'Liquidated Damages', 'Warranty', 'Insurance', 'Completion of Contract', the project import certificate letter dated 06.07.2009, etc. clearly reveal that under the present works contract, the complete unit/power project would be transferred by assessee to RVUNL. Further, as per SOG Act, the goods are said to be transferred only when they are put into deliverable state by the contractor as per the terms and conditions of contract. The transfer in the case was of entire thermal power project. The title to the goods involved in the execution of works contract also, accordingly, only transferred to RVUNL upon completion of contract and upon final handing over of the project as the goods had been subjected to some process to be accommodated in the power project. The same is also evident by the project import certification letter dated 06.07.2009. In the present case, the goods claimed to be sold by the assessee to be



part of inter-state sales were not sold to the RVUNL as goods, but utilized in erection of the thermal power project. Since the erection of thermal power project in the state of Rajasthan can only be termed as an intra-state transaction, the property in goods used in such erection, whether as goods or as some other form, would constitute an intra-state sale and accordingly be subject to RVAT. Therefore, this Court is in agreement with the finding rendered by the RTB in para 11.3, which is reproduced as under:

"11.3. It is obvious from the provisions of S.4(2) of CST Act that a sale shall be deemed to take place inside a State, if the goods are within the State at the time the contract of sale is made (in case of specific or ascertained goods) or at the time of their appropriation to the contract of sale (in case of future or unascertained goods). As has been already discussed in detail the goods involved in the case have been future goods. Their unconditional appropriation to the contract of sale took place only in Rajasthan. Thus, we hold the transaction of offshore and onshore goods claimed under Section 3(a) and Section 3(b) (of CST Act) respectively as sales within Rajasthan taxable under the RVAT Act, 2003."

17. The assessee has relied on several judgments, however none of those judgment deals with EPC works contract where there is a transfer of entire project. The judgment of **CDVAT vs. ABB Ltd. (supra)**, being on different facts, has rightly been distinguished by the RTB with sufficient reasons and it is not deemed necessary to reproduce those reasons here again. Further, the judgment of **Indure Ltd. vs. CTO (supra)**, on which heavy reliance was placed by the assessee, pertains to Section 5(2) of CST Act, whereas the assessee is claiming applicability of CST on



the basis of Section 3 read with Section 6(2) of CST Act. Even otherwise, the nature of transactions is different and the revenue in that case was not allowed to belatedly raise the plea that imported goods were subjected to manufacturing process as part of execution of works contract, whereas in the present case this has been one of the primary arguments of the Revenue.

18. So far as the contention of the assessee that CST along with Entry Tax has already been paid on subject sales is concerned, it is trite that when a statute requires something to be done in certain way, it has to, necessarily, be done in that way. Reliance is placed on **Selvi J.Jayalalithaa & Ors vs State Of Karnataka & Ors: (2014) 2 SCC 401**. Since the nature of transaction attracts applicability of RVAT Act, the assessee cannot be absolved of his liability to pay the same merely because the parties had agreed to pay different tax. There is no estoppel against law. Merely because the assessee might have wrongly paid tax under a different statute would not absolve the assessee from liability to pay tax where it is actually due. The issuance of C-Form under CST Act or Form VAT-47 under RVAT Rules have no bearing on nature of transaction. There was a clause in the contract which specified that TDS on works contract would be deducted under the RVAT Act and the same was done at the end of assessee. Further, as rightly observed by the Karnataka High Court in **Cotmac Pvt. Ltd. vs. CTO: (1967) 20 STC 20 (Kar.)**, it is not possible to adjust the tax refundable under one Act against tax due under another Act.



19. In view of the above, no interference is called for in the STR Nos. 217-219/2020, preferred by the assessee.

20. In the STR Nos. 155-157/2020, preferred by the Revenue, challenge is made to the impugned direction of remand along with setting aside of penalty. So far as penalty is concerned, this Court is of the considered opinion that the *lis* in question was purely a question of interpretation of statutes. Furthermore, there are disturbed finding by the authorities below and one of the parties to the transaction was an extended arm of the State. In these circumstances, this Court is of the view that the RTB had rightly set aside the penalty and this Court is not inclined to interfere with the same.

21. However, so far as the directions of remand are concerned, considering that the same was beyond the scope of pleading; that no issue in this regard were framed before the RTB or before the lower adjudicating authorities; that the same was not even a relief claimed by the assessee, and that no arguments were made to this effect, this Court is inclined to set aside the direction of remand, considering the Apex Court judgments of **Akella Lalitha vs. Konda Hanumantha Rao and Ors.: AIR 2022 SC 3544, Trojan & Co. (supra), and Bharat Amratlal Kothari (supra).**

RESULT

22. In view of the foregoing analysis, the questions of law framed in STR Nos. 217-219/2020 (preferred by the assessee), are answered in favour of the Revenue and against the assessee.



23. The question of law nos. 1-3 in STR Nos. 155-157/2020 (preferred by revenue) are answered in favour of Revenue and against the assessee and conversely question of law no. 4 in STR Nos. 155-157/2020 qua penalty is answered in favour of assessee and against the Revenue.

24. Resultantly, the order of RTB is modified to the extent of setting aside of remand directions. The rest of the order of RTB is maintained.

25. Accordingly, all these STRs, along with pending application(s), if any, stands disposed of in above terms.

(SAMEER JAIN),J

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