

* THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

TAX REVISION CASE No. 87 of 2002

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28.07.2015

Between

State of Andhra Pradesh

... Petitioner

And

\$ Bharat Dynamics Limited

... Respondent

! COUNSEL FOR PETITIONER: _____ Mr. Vivek Reddy,

Special Government
Pleader

^ COUNSEL FOR RESPONDENT: _____ Mr. S.
Dwarakanath

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> Head Note:

? CITATIONS: _____ [1997] 106 STC 158 (AP)
(2008) 12 SCC 458
[1987] 66 STC 91

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ORDER:- (per Hon'ble Sri Justice G. Chandraiah)

This tax revision, under Section 22(1) of the A.P.GST Act, is filed by the State against the orders of the Sales Tax Appellate Tribunal in T.A.No.640/97, dated 31.12.2001, raising two questions of law said to be arising from the orders of the Tribunal. The questions read as under:

- “1. Whether the disputed turnover relating to the manufacture and supply of missiles is sale or job work?**
- 2. Whether rejection of ‘D’ forms in respect of disputed turnovers of Rs.24,80,000-00 and Rs.2,47,112-00 is proper and justified or not?”**

2. The matter relates to the Assessment Year 1993-94 under the CST Act. At the outset, Mr. S. Dwarakanath, learned counsel for the respondent/Assessee, submits that the issue raised in the present case is squarely covered by the judgment of the Division Bench of this Court in the assessee's own case i.e., **State of Andhra Pradesh v. Bharat Dynamics**

Limited ^[1] for the Assessment Years 1971-72 to 1977-78, and the Tribunal had followed the said judgment and as such there is no question of law to be decided and answered. However, Mr. Vivek Reddy, learned Special Government Pleader

appearing on behalf of the State, submits that there is a distinction which has been ignored by the Tribunal in considering the appeal and as such the appeal is required to be considered for the Assessment Years relevant. He submits that from the Assessment Years 1971-72 to 1992-93, the ratio laid down by the judgment in **Bharat Dynamics Limited (1 supra)** was certainly appropriate. However, in the current year and for the subsequent years, there is a distinction as is sought to be pointed out by the Assessing Officer. These distinctions are that, majority of the bulk of material was purchased by the respondent by issuance of C-Forms and D-Forms and which material was got incorporated in the final product which were sold to Government of India and also the foreign buyer. The earlier judgment of this Court was rendered on the finding that the entire material was purchased for and on behalf of the Government of India and, as a matter of fact, it was only a job work; whereas, in the present case, the very fact that a bulk of material was purchased by the Assessee by issuance of C-Forms would reveal that the said purchases were utilized in the manufacture of missiles which are being sold to the Government of India and other Government of India departments. In that view of the matter, the transactions could not be said to be "execution of works contract" exempt from taxation. He would also contend that the very fact that the respondent had obtained C-Forms which are only issued to a dealer for procurement of material which are required in the manufacture of products for sale or for re-sale is a clear indicator that the dealer obtained C-Forms for procuring

material to be incorporated in the missiles which are to be sold. If it is to be contended that there are no sales and it is only for the purpose of executing the work contracts these bulk of materials were procured by utilizing C-Forms, the very utilization of C-Forms would amount to misuse and mis-utilisation of C-Forms, which is impermissible in law. It is also further contended that the respondent is billing the Government of India and they are receiving consideration for the products manufactured by them and if there are no sales there cannot be any receipt of consideration. Pointing out these aspects and drawing our attention to paragraphs 19 and 20 in Page 0168 of **Bharat Dynamics Limited (1 supra)**, learned Government Pleader submits that the ratio laid down in the earlier judgment of the Assessee's own case is distinguishable and not applicable. So far as the second aspect is concerned, learned counsel points out that the Tribunal had erred in allowing concessional rate of tax, notwithstanding the finding of the Assessing Officer that ERDL, Pune, was not eligible to utilize D-Forms. Learned counsel while submitting that the eligibility to get D-Form is only to an organization which is in trade and in that view of the matter the very fact that ERDL, Pune, is ineligible to get D-Forms would indicate that it is either a Corporation or an entity satisfying the conditions of a dealer; and in that context, the finding of the Tribunal is erroneous and, thus, the exemption granted in relation to the transaction relating to D-Forms is unsustainable.

3. On the other hand, Mr. S. Dwarakanath, learned counsel for the respondent, by placing reliance on the judgment of the Division Bench of this Court, reiterates that there is no factual difference between the transactions which were under consideration before this Court in **Bharat Dynamics Limited (1 supra)** and the present one. By referring to various aspects which have been discussed by the Tribunal, the learned counsel prays for dismissal of the revision.

4. We have considered the rival submissions and perused the record.

5. At the outset, we may state that the scope of consideration of a tax revision case by the High Court, in exercise of powers under Section 22 of the A.P.GST Act as applicable to CST transactions, is limited to the consideration of questions of law that arise from the orders of the Tribunal. The Tribunal being the last fact-finding authority, the facts as found by the Tribunal are required to be the basis for considering the questions of law arising in a particular case. Unless a specific question raising perversity of fact is raised, it is impermissible for the High Court, in exercise of revisional jurisdiction, to question the finding of fact recorded by the Tribunal. In other words, the finding of fact, as recorded by the last fact-finding authority under the Statute, requires to be accepted for the purpose of consideration of questions of law. This aspect of the matter is well settled by the judgment of the Hon'ble Supreme Court in **Sudarshan Silks & Sarees v.**

Commissioner of Income Tax, Karnataka^[2]

6. Keeping in view the parameters laid down by the Hon'ble Supreme Court, we may examine the facts as found by the Tribunal. The Tribunal had elaborately considered every aspect of the matter and dealt with the issues. The Tribunal posed the following two questions for consideration.

“1) Whether the disputed turnover of Rs.110,98,71,392/- does not relate to sales.

2) Whether rejection of ‘D’ Forms in respect of disputed turnovers of Rs.24,80,000/- and Rs.2,47,112/- is not proper and justified.”

7. With respect to the 1st point, the findings recorded by the Tribunal are that the respondent is a Government concern and owned and controlled under the Defence Services, and the President of India is the sole owner of the company. The Government of India has entered into an agreement with a French entity for manufacture of certain guided missile systems and the necessary technology and support is being provided by the French entity. The said agreement is assigned in favour of the respondent. As a matter of fact, the entire of the manufacturing is done as per the instructions and to meet the requirements of Government of India and, at all times, entire of the raw material etc., are procured and held in trust, for and on behalf of the Government of India. Under the permission granted by the Government of India, for the Government of India certain export sales are also undertaken. The bulk of the components are supplied by the overseas

collaborator and also certain parts are procured from identified vendors approved by the Government of India. The Tribunal considered the aspect that, under the very agreement entered into by the Government with the French entity, there is a requirement of transfer of technology and indigenisation of the component over the years. Considering the fact that the as per the basic agreement which was entered into between 1971 and 1972, it is natural that the local manufacturing abilities have been improved and efforts were made to absorb the technology so as to reduce the outflow of foreign exchange. For the relevant year, the Tribunal adverted to this aspect and, as a matter of fact, the Tribunal appears to have accepted the contention that the local purchase was only about 7% and 1% in two of the products which form the bulk of the turnover in the present tax revision case. The Tribunal, by placing reliance on the judgment of the Hon'ble Supreme Court in 55 STC 327 (Page 19) and considering the fact that even though there is a procurement of some indigenous material or some parts manufactured by the respondent in the process of fitting and assembly, there is no right to dispose of the final product as they please on account of the fact that the respondent is not the owner of either of the material or of the product and thus came to a conclusion that procurement of certain parts of the material indigenously does not make any difference.

8. We had referred to the questions of law which have been raised above which does not indicate any question of

law having been raised disputing these facts as found by the Tribunal.

9. In the facts of the present case, applying the ratio laid down by this Court in **Bharat Dynamics Limited (1 supra)** and in the absence of any material to come to a different conclusion, respectfully agreeing with the ratio laid down by earlier judgment, question No.1 is required to be answered in favour of the Assessee and against the Department. So far as question No.2 is concerned, the Tribunal had found that ERDL, Pune is not one of the entity listed in G.O.Ms.No.882 dated 28.12.1988, which fact is not being disputed before us. It is only those specific entities which are listed in G.O.Ms.No.882 dated 28.12.1988 that are prohibited to issue D-Forms. We may also further add that the fact that ERDL, Pune, had issued D-Form for procuring material would go to show that they are eligible and entitled to issue such D-Forms and the D-Forms are validly issued. In that view of the matter, allowing the respondent to avail the concessional rate of duty, as applicable to the transaction, is unassailable. We are also not persuaded by the argument of the learned counsel for the Department that on account of the alleged misuse of C-Forms, we have to assume that there is a sale transaction involved. Even assuming for the sake of argument that if there is mis-utilisation of C-Forms or any of the Forms which are issued under the Act, at best, a dealer may invite penalties or punitive measures. This aspect of the matter is settled by the judgment of the Hon'ble Supreme Court in **Commissioner of**

Sales Tax v. Leather Facts Co.^[3]. Hence, we find no reason to interfere with the orders of the Tribunal.

10. The tax revision case is, accordingly, dismissed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

28th July, 2015

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