

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.83 of 2018

Order reserved on: 11-5-2018

Order delivered on: 18-5-2018

Shree Raipur Cement Plant (A unit of Shree Cement Limited) having its office at 31/248, Civil Lines, Raipur (C.G.) through its authorized Signatory and Senior Manager (Taxation) of the petitioner Company, Ashish Bharadia, S/o Shri Gopal Bharadia, Aged about 37 years and R/o Taxation Department, Shree Cements Ltd., Village Khapradih, Thana Khapradih, Tahsil Simga, District Balodabazar-Bhatapara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Finance Department (Tax Division), Through Principal Secretary, Department of Finance, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)
2. The Commissioner, Commercial Taxes Department, Kar Bhawan, Civil Lines, Raipur (C.G.) 492 001.
3. The Assistant Commissioner, Commercial Taxes Department, Circle-3, Kar Bhawan, Civil Lines, Raipur (C.G.) 492 001.
4. Union of India, Ministry of Finance (Department of Revenue), Through Joint Secretary (Revenue), Nirman Bhawan, New Delhi.
5. The Under Secretary (ST-II), Ministry of Finance, Department of Revenue, State Tax Division, New Delhi.

---- Respondents

For Petitioner: Mr. Ramit Mehta, Mr. Saurabh Maheshwari and
Mr. Anumeh Shrivastava, Advocates.

For Respondents No.1 to 3 / State of Chhattisgarh: -
Mr. Anand Dadariya, Deputy Government Advocate.

For Respondents No.4 and 5 / Union of India: -
Mr. Vaibhav P. Shukla, Advocate, appears on behalf of
Mr. B. Gopa Kumar, Assistant Solicitor General of India.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The short question involved in this writ petition is, whether the petitioner is entitled to be issued C-Form under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 in respect of high speed diesel purchased by it in the course of inter-State trade and used by it in the course of manufacturing of cement, after the promulgation of the Central Goods and Services Tax Act, 2017 with effect from 1-7-2017.
2. According to the petitioner, it is a Company registered under the provisions of the Central Sales Tax Act, 1956 (for short, 'the CST Act, 1956') read with the Central Sales Tax (Registration and Turnover) Rules, 1957 (for short, 'the Rules of 1957') and its certificate of registration is valid as on the present date. The petitioner Company is engaged in mining activity of limestone which is used for manufacturing of cement and for which High Speed Diesel is used. The petitioner Company was permitted to purchase goods in the course of inter-State trade at the rates specified in Section 8(1) of the CST Act, 1956. The petitioner was also having registration certificate under the provisions of the Chhattisgarh Value Added Tax Act, 2005 and with the introduction of the Central Goods and Services Tax Act, 2017 (for short, the CGST Act, 2017), the petitioner has also been registered under the CGST Act, 2017 with effect from 1-7-2017. It is the case of the petitioner that the respondent Department had been issuing C-Forms to the petitioner Company till 30-6-2017 for the goods covered under Section 2(d) of the CST Act, 1956 and as specified in the certificate of registration of the dealer for use in terms of Section 8 of the CST Act, 1956, but

with effect from 1-7-2017, from coming into force of the CGST Act, 2017, C-Form is not being issued and / or withheld by showing error message that “ED9: Invoice date should be less than 1st July, 2017”.

3. The petitioner has filed this writ petition stating inter alia that its registration certificate is with regard to High Speed Diesel covered under the definition of “goods” defined in clause (d) of Section 2 of the CST Act, 1956 duly amended with effect from 4-5-2017 published in the Official Gazette on 5-5-2017 and excluded from the purview of the CGST Act, 2017 by virtue of the provisions contained in Section 9(2) of the CGST Act, 2017, as till this date, the GST Council has not recommended bringing High Speed Diesel within the purview of the CGST Act, 2017 and therefore it has not been notified by the Central Government, yet on extraneous consideration, C-Form is not being issued to the petitioner Company which the petitioner Company is otherwise entitled under Section 8(3)(b) of the CST Act, 1956 read with the Rules of 1957, which is absolutely illegal and bad in law.
4. On notice being issued, respondents No.1 to 3 / State has filed its joint return opposing the writ petition filed by the petitioner. It has been stated that the petitioner was a registered dealer under the provisions of the CST Act, 1956 and the Chhattisgarh Value Added Tax Act, 2005. After the roll-out of the Central Goods and Services Tax Act, 2017, the petitioner / dealer has been migrated to the GST regime by virtue of the provisions contained in Section 139 of the CGST Act, 2017 and the provisions of the CGST Act, 2017 as such,

the petitioner's previous registration under the CST Act, 1956 is no more valid and, therefore, the petitioner has rightly been denied the privilege of C-Form, as under the provisions of the CST Act, 1956, C-Form has to be issued only to the registered dealer under the said Act. Therefore, the petitioner's registration under the CST Act, 1956 stood cancelled upon the petitioner's registration under the CGST Act, 2017 and thus, the petitioner is not entitled for the privilege of C-Form under the CST Act, 1956 read with the Rules of 1957. It has further been stated that the petitioner has not availed the facility of C-Form so far as High Speed Diesel is concerned, till 30-6-2017, therefore, the petitioner Company cannot be permitted to use the facility of C-Form after coming into force of the CGST Act, 2017 as such, the petitioner has rightly been denied the privilege of C-Form under the CST Act, 1956 read with the Rules of 1957.

5. Mr. Ramit Mehta, learned counsel appearing for the petitioner, would submit that the petitioner is still having the valid registration certificate issued under the CST Act, 1956 read with the Rules of 1957 and the said certificate of registration by which he is entitled to have the privilege of C-Form, has neither been amended nor cancelled by virtue of the provisions contained in Rule 9(1) of the Rules of 1957. He would further submit that the definition of Section 2(d) of the CST Act, 1956 has been amended and High Speed Diesel has also been brought specifically within the definition of "goods" under the CST Act, 1956. Likewise, Section 9(2) of the CGST Act, 2017 clearly provides that the GST on the supply of high

speed diesel, including other five goods, shall be levied with effect from such date as may be notified on the recommendations of the Council. The GST Council till this date, admittedly and undisputedly, has not notified high speed diesel bringing it under the purview of the CGST Act, 2017. Therefore, the petitioner is entitled for issuance of C-Form under the CST Act, 1956 and its migration to the registration under the CGST Act, 2017 will be confined excluding the goods (high speed diesel), as there is no provision even under the CGST Act, 2017 that his registration under the CGST Act, 2017 would automatically cancel his registration under the CST Act, 1956 particularly, the goods which are included in Section 2(d) of the CST Act, 1956 and those have been excluded from the purview of the CGST Act, 2017 by Section 9(2) of the CGST Act, 2017, as by issuance of C-Form the petitioner would be entitled for concessional rate of tax. Therefore, the writ petition be allowed and the respondent State be directed to issue C-Form to the petitioner for the goods namely high speed diesel under the provisions of the CST Act, 1956 read with the Rules of 1957 and as per the certificate of registration Annexure P-1.

6. Mr. Anand Dadariya, learned Deputy Government Advocate appearing for the State/respondents No.1 to 3 while opposing the submission made by learned counsel for the petitioner, would submit that the petitioner has concededly migrated into the GST regime from the CST regime by getting registration under the CGST Act, 2017 with effect from 1-7-2017, therefore, the petitioner's registration under the CST Act, 1956 would automatically stand

cancelled with effect from 1-7-2017 and as such, he is not entitled for issuance of C-Form and thereby the benefit of concessional rate of tax under any provision of the CST Act, 1956 and the Rules made thereunder by referring to Section 139 read with Section 22 of the CGST Act, 2017, cannot be granted to the petitioner. He would further submit that the petitioner has never invoked the privilege of C-Form for high speed diesel prior to 1-7-2017 and as such, high speed diesel is used by the petitioner for the purpose of operation of drill machine at mines, lifting and loading of limestone in dumper, use of diesel as fuel in dumper and other equipments for extraction of limestone from mines and its transportation, use of diesel in plant and machinery such as kiln and other machineries used in manufacture of clinker and cement etc.. Therefore, the petitioner is otherwise also not entitled for issuance of C-Form as he does not fulfill the criteria under Section 8(3)(b) of the CST Act, 1956 and as such, issuance of C-Form to the petitioner is not permissible and the writ petition is liable to be dismissed. He would finally submit that after coming into force of the CGST Act, 2017, the petitioner has not filed any return under the CST Act, 1956, as such, the writ petition deserves to be dismissed.

7. In rejoinder submission, Mr. Mehta would submit that the CST Act, 1956 and the Rules of 1957 have not been repealed and the petitioner is still holding valid certificate of registration under the CST Act, 1956 and the Rules made thereunder and as such, the petitioner's registration certificate granted under the CST Act, 1956 cannot be held to be cancelled automatically unless the procedure

prescribed under Section 7(3)(b) of the CST Act, 1956 read with Rule 9 of the Rules of 1957 is followed for cancellation of registration which has not been done in the present case. There is no enabling provision in the CGST Act, 2017 for automatic cancellation of registration of the certificate obtained under the CST Act, 1956 upon taking registration under the CGST Act, 2017. Even otherwise, for the goods mentioned in the definition clause of Section 2(d) of the CST Act, 1956, registration certificate of the petitioner Company is still valid and he is still entitled for the privilege of issuance of C-Form as per the certificate of registration issued under Section 7(1) of the CST Act, 1956. Replying to the submission of not filing return under the CST Act, 1956 after coming into force of the CGST Act, 2017, he would submit that C-Form has not been issued to the petitioner, despite request, therefore, he could not file return and the petitioner's representation has not been replied / answered.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
9. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice the broad features of the CST Act, 1956 before entering into the merits of the matter.
10. The CST Act, 1956 has been enacted to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy,

collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

11. Section 6(1) of the CST Act, 1956 stipulates that every dealer shall be liable to pay tax under the Act on all sales effected in the course of inter-State trade and commerce. The rate of tax payable by a dealer, who sells goods in the course of inter-State trade or commerce, to another registered dealer, is stipulated at the concessional rate of 2% under Section 8(1) of the Act, if the goods are of the description contained in sub-section (3) of Section 8. As regards the goods that do not satisfy the description contained in Section 8(3), the rate of tax payable by a dealer on the turnover of inter-State sales, is as per the rate applicable to the sale or purchase of such goods inside the appropriate State under the Sales Tax Law of that State.
12. Under Section 7(1) of the CST Act, 1956, every dealer, who is liable to pay tax under the CST Act, 1956, should make an application for registration under the Act, to such authority in the appropriate State, as the Central Government may specify. The certificate of registration so issued is liable to be cancelled under sub-section (4) (b) of Section 7, if the dealer fails to pay any tax or penalty payable under the CST Act, 1956.
13. Sub-section (1) of Section 8 of the CST Act, 1956 carves out an

exception. If the sale is to a registered dealer and if the sale is of the goods described in sub-section (3), the dealer need not pay tax at the rate prescribed by the local Sales Tax Law of the State in terms of sub-section (2). It is enough if such a person pays only 2%. Under sub-section (4) of Section 8, the dealer is obliged to furnish to the prescribed authority, 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. Thus, sub-section (1) of Section 8 of the CST Act, 1956 is substantive in nature and sub-section (4) of Section 8 is procedural in nature.

14. Sections 13(1)(a) and (3) of the CST Act, 1956 read as under: -

“13. Power to make rules.-(l) The Central Government may, by notification in the Official Gazette, make rules providing for-

(a) the manner in which applications for registration may be made under this Act, the particulars to be contained therein, the procedure for the grant of such registration, the circumstances in which registration may be refused and the form in which the certificate of registration may be given;

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

(3) The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.”

15. In exercise of powers conferred by sub-section (1) of Section 13 of the CST Act, 1956, the Central Government has framed Rules known as the Central Sales Tax (Registration and Turnover) Rules, 1957. Rule 12 of the said Rules provides as under:—

“12. (1) The declaration and the certificate referred to in sub-section (4) of Section 8 shall be in Forms ‘C’ and ‘D’ respectively:

Provided that Form ‘C’ in force before the commencement of the Central Sales Tax (Registration and Turnover) (Amendment) Rules, 1974, or before the commencement of the Central Sales Tax (Registration & Turnover) (Amendment) Rules, 1976, may also be used up to the 31st December, 1979 with suitable modifications:

Provided further that a single declaration may cover all transactions of sale which take place in one financial year between the same two dealers:

Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over to different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each financial year.

(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 form 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 or 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.....”

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*** *** ***”

16. Section 8(4) of the CST Act, 1956 specifically provides that 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.
17. The purpose of prescribing the filing of C Form has been highlighted by the Supreme Court in the matter of **India Agencies (Regd.), Bangalore v. Additional Commissioner of Commercial Taxes, Bangalore**¹ by observing as under: -

“15. The very purpose of prescribing the filing of C Forms is that there should not be suppression of any inter-State sales by a selling dealer and evasion of tax to the State from where the actual sales are affected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C Form to the selling dealer. Since the dealer should issue C Form, he has to maintain a detailed account of such C Forms obtained from the department prescribed under the State's taxation law. The C Form is a declaration to be issued only by the Sales Tax Authorities of the States concerned. By issuing declaration in C Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 4% as prescribed by the State concerned of the purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where the selling dealer is situated.”

18. Thus, the declaration (C Forms) are required by the registered

1 (2005) 2 SCC 129

dealer to purchase goods from other States at concessional tax rate under the CST Act, 1956. C Form is prescribed under Rule 12(1) of the Rules of 1957 as a declaration form for the purpose as specified under Section 8(4) of the CST Act, 1956 and if the registered dealer fails to procure C Form from the respondents / State and thereafter, do not provide C Form to the supplier/seller of another State, then the registered dealer is being exposed to high tax rate imposable on inter-State goods purchases which is much higher as compared to the 2% rate of tax prescribed under the CST. If the declaration C Form is not provided to the sellers of other States, this will lead to increase in the cost of goods being purchased.

19. At this stage, it would be appropriate to notice the definition of Section 2(d) contained in the CST Act, 1956 (as it originally stood) which provides as under: -

“(d) “goods” includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;”

20. This definition of “goods” contained in Section 2(d) of the CST Act, 1956 suffered amendment in the Taxation Laws (Amendment) Act, 2017 published in the Gazette of India on 5-5-2017. The amended definition of “goods” states as under: -

“(d) “**Goods**” means-

- (i) petroleum crude;
- (ii) high speed diesel;
- (iii) motor spirit (commonly known as petrol);
- (iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption”

21. Thus, the amended definition of goods under the CST Act, 1956 includes high speed diesel and by virtue of the said amendment, the definition of “goods” given under the CST Act stands amended whereby high speed diesel was kept under the meaning of goods amongst other five items.

22. The Central Goods and Services Tax Act, 2017 was promulgated and brought into force with effect from 1-7-2017, which is an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. Likewise, the Chhattisgarh Goods and Services Tax Act, 2017 (for short, 'the Chhattisgarh GST Act, 2017') was promulgated and brought into force with effect from 1-7-2017 which is also an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the State of Chhattisgarh and the matters connected therewith or incidental thereto. Thus, the CGST Act, 2017 and the Chhattisgarh GST Act, 2017, both have been introduced with effect from 1-7-2017 by the effect of which the statutes which were imposing indirect taxes were repealed and the only indirect taxes that prevailed are the Central GST and the State GST. The levy of goods and services tax on goods and services is being made by the Central Government under the provisions as promulgated under the CGST Act, 2017 and the State Government levy goods and services tax under the provisions as promulgated

under the State GST Act. The objective of the Central GST Act and the Chhattisgarh GST Act is stated as an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government / State Government and for matters connected therewith or incidental thereto.

23. At this juncture, it would be appropriate to notice the repeal and saving provision of the CGST Act, 2017 i.e. Section 174 of the CGST Act, 2017, which provides as under: -

“174. Repeal and saving.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx”

24. The aforesaid provision of the CGST Act, 2017 contains a provision pertaining to repeal and saving. It is pertinent to notice that Section 174 of the CGST Act, 2017 does not include the CST Act, 1956 for the purpose of repealing and as such, the operation of the CST Act, 1956 is kept intact even after the enactment of the CGST Act, 2017 with effect from 1-7-2017.

25. Likewise, the Chhattisgarh GST Act, 2017 also makes a provision for repeal and saving. Section 174(1) of the Chhattisgarh GST Act, 2017 provides as under: -

“174. Repeal and saving.—(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,

(a) (i) the Chhattisgarh Value Added Tax Act, 2005 (2 of 2005) shall apply only in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution.

(b) (i) the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (52 of 1976);

(ii) the Chhattisgarh Hotel Tatha Vas Grihon Me Vilas Vastuon Par Kar Adhiniyam, 1988 (13 of 1988); and

(iii) the Chhattisgarh Entertainments Duty and Advertisements Tax Act, 1936 (30 of 1936),

(hereinafter referred to as the repealed Acts) are hereby repealed.”

26. The aforesaid provision of the State Act clearly provides that the Chhattisgarh Value Added Tax Act, 2005 shall apply only in respect of goods included in Entry 54 of the State List of the Seventh Schedule to the Constitution. Entry 54 of the State List of the Seventh Schedule to the Constitution of India as amended by the Constitution (One Hundred and First Amendment) Act, 2016, states as under: -

“54. Taxes on the sale of petroleum, 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 of commerce or sale in the course of international trade or commerce of such goods.”

27. Thus, from the aforesaid analysis, it is quite vivid that the Chhattisgarh Value Added Tax Act, 2005 has not been repealed qua the items specified under the amended Entry 54 of the State List of the Seventh Schedule to the Constitution, whereby high speed diesel is included.

28. Section 9(2) of the CGST Act, 2017 provides for levy and collection

of GST subject to the provisions of sub-section (2) of Section 9 of the CGST Act, 2017. Sub-section (2) of Section 9 of the CGST Act, 2017 carves out an exception as under: -

“9. Levy and collection.—(1) xxx xxx xxx

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.”

29. Similarly, Section 9(2) of the Chhattisgarh GST Act, 2017 provides as under: -

“9. Levy and collection.—(1) xxx xxx xxx

(2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.”

30. Sub-section (2) of Section 9 of the CGST Act, 2017 and the Chhattisgarh GST Act, 2017 clearly provide that GST on crude oil, high speed diesel, aviation turbine, motor spirit (petrol) shall be levied with effect from the date as may be notified by the Government on the recommendations of the GST Council. Therefore, the CGST Act, 2017 has kept the aforesaid six goods away from the ambit of the CGST Act, 2017 and no notification has been issued by the Central Government on the recommendation of the GST Council imposing GST on high speed diesel at a prescribed rate.

31. Thus, the net effect of the aforesaid discussion is that after the promulgation of the CGST Act, 2017 and the State Act, the items mentioned in the amended Entry 54 of the State List of the Seventh

Schedule to the Constitution are governed by the CST Act, 1956, as no notification has been issued even under Section 9(2) of the CGST Act, 2017 by the Central Government or by the State Government under Section 9(2) of the Chhattisgarh GST Act, 2017, on the recommendation of the GST Council, therefore, the inter-State trade of high speed diesel would be governed by the CST Act, 1956 and the petitioner is entitled to make inter-State purchases of high speed diesel from other States as before and his registration certificate under the CST Act, 1956 and the rules made thereunder still holds the field and is valid.

32. A Division Bench of the Punjab and Haryana High Court in the matter of **Cargo Power Limited v. State of Haryana and others**² while dealing with non-issuance of C-Form with respect to natural gas to a dealer registered under the provisions of the CST Act, 1956, posed the following question for consideration and answered in affirmative. The question framed by Their Lordships states as under: -

“4. The issue involved in the present petition is whether after the amendment of the CST Act, the petitioner is entitled to be issued 'C' Forms in respect of the natural gas purchased by it in the course of inter-state sales and used by it for the generation of electricity.
...”

33. The Division Bench speaking through Avneesh Jhingan, J, held at the end of para 17 as under: -

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

34. Their Lordships finally directed the State authorities to issue 'C'

² CWP No.29437/2017, decided on 28-3-2018

Forms by holding as under: -

“28. In these circumstances, the writ petition is allowed. It is held that the respondents are liable to issue 'C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana. ...”

35. I respectfully agree and follow the principle of law laid down in the afore-stated judgment.

36. The learned State counsel contended that after introduction and roll-out of the CGST Act, 2017 with effect from 1-7-2017, the petitioner has migrated to the GST regime from the CST regime by virtue of the provisions contained in Section 139 of the CGST Act, 2017 and registered as a dealer under the provisions of the CGST Act, 2017, therefore, the petitioner is not entitled for issuance of C-Form. The said submission deserves to be rejected for reasons, firstly, that the CGST Act, 2017 has not by its repealing provision repealed the CST Act, 1956 which is vivid from the focused perusal of Section 174 of the CGST Act, 2017 and the provisions of the CST Act, 1956 are still applicable for its inter-State trade even after the roll-out of the GST Act confining to “goods” defined in Section 2(d) of the CST Act, 1956. Secondly, Section 9(2) of the CGST Act, 2017 specifically bars six items including high speed diesel and to levy GST on high speed diesel, recommendation of the GST Council would be necessary to be notified by the Central Government, neither the GST Council has recommended levy of GST on high speed diesel nor it has been notified by the Central Government particularly when prior to introduction of GST with effect from 1-7-2017, the competent legislature has already

amended the definition of “goods” under Section 2(d) of the CST Act, 1956 and purposefully amended the definition of “goods” mentioning the same items which are barred under Section 9(2) of the CGST Act, 2017 whereby high speed diesel is included.

37. Next submission of the learned State counsel is that after introduction and promulgation of GST, the registration certificate of the petitioner issued under the provisions of the CST Act, 1956 and the rules made thereunder would automatically stand cancelled after his migration to the GST regime, has no legs to stand. The registration certificate issued under the CST Act, 1956 can be cancelled only after the initiation of proceeding as prescribed under Section 7(4)(b) of the CST Act, 1956 read with Rule 9 of the Rules of 1957 and the proceeding of cancellation has neither been initiated nor the petitioner's certificate of registration has been cancelled till this date in accordance with the provisions contained in the CST Act, 1956 and the rules made thereunder. However, it would be clear that the registration certificate of the petitioner issued under the CST Act, 1956 will be limited to the goods as defined in the amended definition of Section 2(d) of the CST Act, 1956 after the promulgation of the CGST Act, 2017 and as such, after the promulgation of the CGST Act, 2017 with effect from 1-7-2017, inter-State purchase of high speed diesel would still be governed by the provisions of the CST Act, 1956 and would not be governed by the provisions of the CGST Act, 2017 and the certificate of registration issued to the petitioner under the CST Act, 1956 would still be valid to the extent of “goods” as defined under

the amended definition of Section 2(d) of the CST Act, 1956 including high speed diesel.

38. Further submission of the learned State counsel that since the petitioner did not avail the facility / privilege of 'C' Form with respect to high speed diesel prior to 1-7-2017, now, he cannot be allowed to use 'C' Form qua high speed diesel, deserves to be rejected, as if the petitioner is lawfully entitled and eligible for issuance of 'C' Form, he cannot be declined such facility, merely on the count that he did not avail such facility prior to 1-7-2017 as the CGST Act, 2017 or the CST Act, 1956 do not bar to avail such facility on the said ground. Non-furnishing of return by the petitioner raised by the State is equally fallacious. Even otherwise, there is no bar in the CGST Act, 2017 that the petitioner Company after migrating from the CST regime to the GST regime cannot hold registration certificate under the CST Act, 1956 confining it to the goods defined in Section 2(d) of the CST Act, 1956 which includes high speed diesel as such, there is no provision under the CGST Act, 2017 which bars holding of registration certificate under the Act other than the CGST Act, 2017.

39. On the basis of aforesaid analysis, it is held that the petitioner is a registered dealer under the provisions of the CST Act, 1956 read with the Rules of 1957 and his registration certificate under the CST Act, 1956 read with the Rules of 1957 continues to be valid for the purpose of inter-State sale and purchase of high speed diesel despite the petitioner having been migrated to the GST regime with effect from 1-7-2017, as the definition of goods as defined in

Section 2(d) of the CST Act, 1956 has been amended prior to coming into force of the CGST Act, 2017 from 1-7-2017 which includes high speed diesel. Further, under Section 9(2) of the CGST Act, 2017, the GST Council has not made any recommendation for bringing high speed diesel within the ambit of the CGST Act, 2017 and therefore the Central Government has not notified high speed diesel to be within the ambit and sweep of the CGST Act, 2017. Thus, the petitioner's registration certificate under the CST Act, 1956 is still valid for the goods defined in Section 2(d) of the CST Act, 1956, including high speed diesel, and the petitioner is entitled for issuance of C-Form for inter-State purchase / sale of high speed diesel against the said C-Form. Accordingly, the respondents shall be liable and are directed to issue C-Form to the petitioner in respect of high speed diesel to be purchased by the petitioner and used in the course of manufacture of cement and for that, it is further directed to rectify and remove the error on their official website and entertain the petitioner's application submitted on-line on the official website seeking issuance of C Form to the petitioner for said goods.

40. The writ petition is allowed to the extent outlined herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No.83 of 2018

Shree Raipur Cement Plant

Versus

State of Chhattisgarh and others

HEAD NOTE

GST Council has not recommended levy of GST on high speed diesel and same is not notified by the Central Government under Section 9(2) of the Central Goods and Services Tax Act, 2017.

वस्तु एवं सेवा कर (जी.एस.टी.) परिषद ने हाई स्पीड डीजल (तेज गति डीजल) पर जी.एस.टी. उगाही की अनुशंसा नहीं की है तथा इसे केन्द्र सरकार द्वारा केन्द्रीय वस्तु एवं सेवा कर अधिनियम, 2017 की धारा 9(2) के अन्तर्गत अधिसूचित नहीं किया गया है।