NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 02-02-2018

Judgment delivered on 09-04-2018

WA No. 536 of 2017

1. M/s Era Infra Engineering Ltd. Seepat Road Bilaspur Chhattisgarh Having Its Registered Office At C-56/41 , Sector 62 , Noida 201305. Through Vinod Bhatia, Senior Officer (Taxation) S/o Dharam Pal Bhatia Aged About 34 Years R/o Plot No. M M 108 Second Floor Flat No. 4 D L F Ankur Vihar Loni Ghaziabad Uttar Pradesh 201102, Uttar Pradesh

---- Appellant

Versus

1. State Of Chhattisgarh Through Its Secretary, Finance And Planning Department Commercial Tax Department Mantralaya , Mahanadi Bhawan Naya Raipur Chhattisgarh.

2. Commissioner Commercial Tax Department, Government Of Chhattisgarh Vanijya Kar Bhawan South Civil Lines, Raipur (CG).

3. Additional Commissioner, Commercial Tax Department Government Of Chhattisgarh Vanijya Kar Bhawan South Civil Lines Raipur Chhattisgarh.

4. Regional Deputy Commissioner , Commercial Tax Department , Bilaspur Region No.1, Bilaspur, Chhattisgarh

---- Respondents

For Appellant	Shri Anumeh Shrivastava, Advocate
For Respondents/State	Shri R.K. Mishra, Dy. Adv. General

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Ram Prasanna Sharma

C A V Judgment

Per Prashant Kumar Mishra, J.

1. The appellant would assail the order passed by the learned Single Judge dismissing its petition in which the challenge was to the revisional order passed by the Additional Commissioner,

Commercial Tax, Raipur, on 3-4-2017 and the order dated 22-12-2015 passed by the Regional Deputy Commissioner, Commercial Tax, Bilaspur, whereby the appellant has been saddled with the liability to pay the Value Added Tax (henceforth 'the VAT') at the rate of 12.5% chargeable for 'cable' instead of tax at the rate of 4%, which the appellant had paid declaring the goods as 'industrial cable'.

2. The appellant executed a work contract with the Railways pertaining to Railway Signaling/Communication cables during the assessment year 2007-08. The appellant submitted its return, which was, later on, subjected to audit wherein an objection was raised as to the rate of tax to be levied on the cable purchased by the appellant for executing the work contract. The audit objection, to be precise, was that instead of the amount of 4% tax paid by the appellant treating the cable as industrial cable, the appellant should have paid the tax at the rate of 12.5%, as the cable used by it was simple cable and not electrical cable. The appellant, thus, concealed and evaded tax to the tune of 8.5%.

3. The learned Single Judge dismissed the writ petition on the ground that the appellant has not produced any material to satisfy the authorities that the cable used by it was industrial cable, therefore, the appellant has not discharged the burden lying on it to satisfy that it has paid the appropriate tax.

4. Assailing the order impugned, Shri Anumeh Shrivastava, learned counsel appearing for the appellant, would argue that the appellant was not provided any opportunity of hearing at the revisional level and the entire issue has been reopened, which is not permissible.

5. Per contra, Shri R.K. Mishra, learned Deputy Advocate General appearing for the State, would reiterate the stand taken by the respondent at the time of hearing of the writ petition.

6. To appreciate the submissions, few provisions of the Chhattisgarh Value Added Tax Act, 2005 (henceforth 'the Act, 2005') need to be referred.

7. Section 14 of the Act, 2005 speaks about burden of proof. It provides that the burden of proving that any sale or purchase effected by a dealer is not liable to tax under Section 8 or Section 9 as the case may be, or that he is eligible for an input tax rebate under Section 13 shall be on the dealer.

8. Section 8 of the Act, 2005, in turn, provides that there shall be levied on goods specified in Schedule II, a tax at the rate mentioned in the corresponding entry in column (3) thereof; and such tax shall be levied on the taxable turnover of a dealer liable to pay tax under the Act. Similarly, Section 9 deals with levy of purchase tax providing that every dealer who in the course of his business purchases any goods specified in schedule II from any person other

than a registered dealer or from a registered dealer in the circumstances in which no tax under section 8 is payable by that registered dealer on the sale price of such goods except where the goods are tax paid goods within the meaning of clause (x) of Section 2, shall be liable to pay tax on the purchase price of such goods if,- (a) after their purchase, the goods are not sold within the State of Chhattisgarh or in the course of inter-State trade or commerce or in the course of export out of the territory of India but are sold or disposed of otherwise, or consumed or used in the manufacture of goods declared tax-free under Section 15 and Section 15 (b) which are disposed off otherwise than by way of sale in the course of export out of the territory of India; or (b) such goods covered by part III of Schedule II and/or Schedule III are used or consumed in the manufacture of goods.

9. In the case at hand, the appellant is not disputing the liability to pay tax on the cable purchased by it. The only dispute is about the rate of tax applicable to the said cable, whether it should be taxed at 4% or 12.5%.

10. In the re-assessment order it is observed that Entry No.61 of Part II of Schedule II relates to industrial cables, high voltage cables, XLPE cables, Jelly filled cables and optical fibers to be taxed at 4% and the appellant has failed to satisfy by producing evidence that the cables used by it falls under the said entry.

11. In the audit report it was found that the appellant has purchased cables from outside the State from one M/s Paramount Communications Limited and paid tax at the rate of 4% whereas it should have paid the tax at the rate of 12.5%. In the revisional proceedings preferred by the appellant the Additional Commissioner, Commercial Tax, Chhattisgarh passed an order dated 29-11-2014 remitting the matter back to the Assessing Officer after examining the matter as the burden of proof lies on the department.

12. After the remission the assessing authority again provided opportunity of hearing to the appellant and passed an order on 22-12-2015 (Annexure – P/6 to the writ petition) again fastening liability on the appellant to pay tax @ 12.5% instead of 4%.

13. We have already referred to the provisions contained in Section 14 of the Act, 2005 concerning burden of proof. The language employed in the provision is plain and simple that the burden of proof in support of the claim for lower rate of tax is on the dealer/assessee. In view of this provision, the learned Single Judge has rightly held that the appellant having failed to satisfy the Assessing Officer during reassessment proceeding or the revisional authority or even before this Court that the cables used by it were industrial cables, the appellant is liable to pay tax at the rate of 12.5%.

14. The only document pressed into service by the appellant is in form of a certificate by the Chartered Engineer Shri Adesh Mohan Daga of Ghaziabad (Uttar Pradesh) certifying that the cables manufactured by M/s Paramount Communications Limited is generally used in industries being a heavy duty cable/industrial cable.

15. Curiously, the certificate has not been issued by the manufacturer himself, therefore, the manufacture is not claiming the cable produced by him to be industrial cable. Merely because some cable is used in raising an industry it would not make the cable as industrial cable because the same involves manufacturing with specifications to be used only in industrial activity. The appellant has, thus, failed to satisfy the authorities that the cable used by it is industrial cable.

16. In view of the aforesaid facts and circumstances of the case, we are in full agreement with the view taken by the learned Single Judge, which is the only view possible to be taken in the case at hand.

17. In the result, the writ appeal, being bereft of merit, is liable to be and is hereby dismissed.

Sd/-	Sd/-
Judge	Judge
Prashant Kumar Mishra	Ram Prasanna Sharma

Gowri