

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 29437 of 2017

DATE OF DECISION : 28.03.2018

Carpo Power Limited

.... PETITIONER

Versus

State of Haryana and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Puneet Bali, Senior Advocate, with
Mr. Ankur Saigal, Advocate,
for the petitioner.

Mr. Chetan Jain, Advocate,
for respondent No.7.

Mr. Aman Arora, Advocate,
for respondent No.8.

Mrs. Mamta Singla Talwar, DAG, Haryana.

* * *

AVNEESH JHINGAN, J.

The petitioner has challenged the respondents' refusal to issue 'C' Forms in respect of natural gas purchased by it in the course of inter-state trade or commerce and used by it for the generation of electricity. The petitioner seeks a writ of mandamus directing the respondents to issue 'C' Forms under the Central Sales Tax Act, 1956 and the Central Sales Tax (Registration and Turnover) Rules, 1957 in respect of the inter-state sales of natural gas by certain oil companies based in Gujarat to the petitioner in

Haryana and used by the petitioner for generating electricity.

2. The petitioner is involved in the generation of electricity through its power plant at Bawal in Haryana. Natural gas is used for generation of electricity. The natural gas is supplied by M/s Bharat Petroleum Corporation Limited and M/s Indian Oil Corporation Limited from Gujarat.

3. The petitioner, before the Goods & Service Tax, 2017 (for short, 'GST') came into force, was registered under the Haryana Value Added Tax Act, 2003 (for short, 'the HVAT Act') and under the Central Sales Tax Act, 1956 (for short, 'the CST Act'). The registration under the CST Act continues to date. The certificate admittedly includes natural gas. The certificate is in Form B which in so far as it is relevant reads :-

Form B

Certificate of Registration

[See rule 5 (1)]

TIN No. 06342708008

This is to certify that M/S CAPRO POWER LTD. whose principal place of business within the State of Haryana has been registered as a dealer under sections 7 (1) 7 (2) of the Central Sales Tax Act, 1956.

The class (es) of goods specified for the purposes of sub-sections (1) and (3) of section 8 of the said Act is/are as follows and the sales of these goods in the course of inter-State trade to the dealer shall be taxable at the rate specified in that sub-section subject to the provisions of the sub-section (4) of the said section :

(d) for use in the generation or distribution of electricity or any other form of power.

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. We have answered the question in the affirmative, in favour of the petitioner.

5. Before advertng to the issue involved, we quote the relevant provisions of the Central Sales Tax Act, 1956 ('CST Act'), Central Sales Tax (Registration and Turnover) Rules, 1957 ['CST (R&T) Rules'], Central Sales Tax (Haryana) Rules, 1957 ('CSTH Rules'), Central Goods and Service Tax Act, 2017 ('CGST Act') and Haryana Goods and Service Tax Act, 2017 ('HGST Act') and Declaration Form C.

(A) Sections 2 (b), (d), before and after amendment, (f) (i), 3, 6 (1), 7 (1), (2), (4), 8 (1), (2), (3), (4), 9 (1), (2) and 13 (4) (e) of the Central Sales Tax Act, 1956, in so far as they are relevant read as under :

2. (b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission remuneration or other valuable consideration, and includes -

(i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

..... X X X X X X X X X

Original **2. (d)** "goods" includes all materials, articles,
Section commodities and all other kinds of movable
property, but does not include newspapers
actionable claims, stocks, shares and securities.

After **2. (d)** "goods" means –
2017 (i) petroleum crude;
amendment (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.
2. (f) "registered dealer" means a dealer who is
registered under section 7;

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

2. (i) "sales tax law" means any law for the time
being in force in any State or part thereof which
provides for the levy of taxes on the sale or
purchase of goods generally or on any specified
goods expressly mentioned in that behalf and
includes value added tax law, and "general sales
tax law" means any law for the time being in
force in any State or part thereof which provides
for the levy of tax on the sale or purchase of
goods generally and includes value added tax
law;

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.

6. Liability to tax on inter-State sales —

Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5 is a sale in the course of export of those goods out of the territory of India.

(1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

7. Registration of dealers —

(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and even such application shall contain such particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in subsection (1), and every such application shall contain such particulars as may be prescribed.

Explanation — For the purposes of this subsection, a dealer shall be deemed to be liable to pay tax under the sales tax law of the appropriate State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.

(4) A certificate of registration granted under this section may —

(a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, be amended by the authority

granting it if he is satisfied that by reason of the registered dealer having changed the name, place or nature of his business or the class or 44classes of goods in which he carries on business or for any other reason the certificate of registration granted to him requires to be amended; or

(b) be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has ceased to exist or has failed without sufficient cause, to comply with an order under subsection (3A) or with the provisions of sub-section (3C) or sub-section (3E) or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered under sub-section (2) has ceased to be liable to pay tax under the sales tax law of the appropriate State or for any other sufficient reason.

8. Rates of tax on sales in the course of inter-State trade or commerce.—

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

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

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

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

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

(a) x x x

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

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

9. Levy and collection of tax and penalties —

(1) The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce, whether such sales fall within clause (a) or clause (b) of section 3, shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provision of sub-section (2), in the State from which the movement of the goods commenced:

..... X X X X X X X X X

(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax,

registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, be rules made in this behalf make necessary provision for all or any of the matter specified in this sub-section.

13. Power to make rules —

(4) In particular and without prejudice to the powers conferred by sub section (3), the State Government may make rules for all or any of the following purposes, namely:—

(a) to (d)

x x x

(e) the authority from whom, the conditions subject to which and fees subject to payment of which any form of certificate prescribed under clause (a) of the first proviso to sub-section (2) of section 6 or of declaration prescribed under sub-section (1) of section 6A or subsection (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and

records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished;

(B) Rules 2 (aa), (b) and (cc) and 12 (1) of the Central Sales Tax(Registration and Turnover) Rules, 1957 in so far as they are relevant are as follows :-

2. (aa) ‘authorised officer’ means an officer authorised by the Central Government under clause (b) of sub-section (4) of section 8;

2. (b) ‘form’ means a form appended to these rules;

2. (cc) ‘prescribed authority’ means the authority empowered by the Central Government under sub-section (2) of section 9, or the authority prescribed by a State Government under clause (e) of sub-section (4) of section 13, as the case may be;

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

..... X X X X X X X X X

(C) Rule 7 (1) of Central Sales Tax (Haryana) Rules, 1957 is as follows :

7 (1) Where a dealer desires the certificates of registration granted to him under these rules to be amended, he shall submit an application for this purpose to the notified authority setting out the specific matters in respect of which he desires such amendment and the reasons therefore, together with the certificate of registration and the

copies thereof, if any, granted to him; and such authority may, if satisfied with the reasons given, make such amendments as it thinks necessary, in the certificate of registration and the copies thereof, if any, granted to him.

(D) Form C is as follows :-

FORM C

ORIGINAL
THE CENTRAL SALES
TAX
((Registration & Turnover)
RULES, 1957
FORM 'C'
FORM OF DECLARATION
[Rule 12 (1)]
Name of issuing State
Officer of issue
Date of issue
Name of the purchasing dealer
to whom issued alongwith his
Registration Certificate No.....
Date from which registration
is valid

Seal of the
Issuing Authority

Serial No.

To

* (Seller)

Certified that the goods **
Ordered for in our purchase
Order No.
dated and supplied
as per Bill/Cash
Memo/Challan No.....
dated
as stated below*
purchased from
you as per Bill/Cash Memo
Challan No.....
dated
are for resale.....use in
manufacture/processing of
goods for sale..... use in mining....
use in generation/distribution
of power.....Packing of goods for
sale/re-sale and are covered by
my/our registration certificate
No..... dated issued
under the Central Sales Tax Act,1956.
It is further certified that I/
We am/are not registered

under Section 7 of the said Act
in the State of
in which the goods Covered by
this Form are/will be
delivered.

Name and address of the
purchasing dealer in full

Date

The above statements are
true to the best of my
knowledge and belief.

(Signature)

(Name of the person signing
the declaration.)

(Status of the person signing
the declaration in relation to
the dealer)

*Particulars of Bill/ Cash/
Memo/Challan

DateNo.....

Amount

Name and Address of the
seller with name of the State.

** Strike out whichever is not
applicable.

(Note : To be furnished to the
prescribed authority in
accordance with the rule
framed under Section 14 (4) (e)
by the appropriate State
Government.)

(The counterfoil and the duplicate of Form C are to be retained by the
purchasing dealer and the selling dealer respectively.)

(E) Sections 2 (52) and 9 (2) of the Central Goods and Service Tax
Act, 2017 are as follows :-

2. (52) “goods” means every kind of movable
property other than money and securities but
includes actionable claim, growing crops, grass
and things attached to or forming part of the land
which are agreed to be severed before supply or
under a contract of supply;

9. (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.

(F) Sections 2 (52), 7 (1), 9 (1), (2) and 174 of the Haryana Goods and Service Tax Act, 2017 so far as they are relevant are as follows :-

2. (52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

7. (1) For the purposes of this Act, the expression “supply” includes

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the Haryana Goods and Services Tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty percent, as may be notified by the Government on the

recommendations of the Council and collected in such manner, as may be prescribed and shall be paid by the taxable person.

(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.

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

(i) the Haryana Value Added Tax Act, 2003 (6 of 2003), except in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution;

(ii) The Haryana Tax on Entry of Goods into Local Areas Act, 2008 (8 of 2008);

(iii) The Punjab Entertainments Duty Act, 1955 (Punjab Act 16 of 1955) as applicable to the State of Haryana, except to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council;

(iv) The Haryana Tax on Luxuries Act, 2007 (23 of 2007), (hereinafter referred to as the repealed Acts) are hereby repealed.

(2) x x x x x x x x x
(3) x x x x x x x x x

6. We will first have a look at the working of the CST Act before implementation of the GST laws viz The Central Goods and Services Tax Act, 2017, the Integrated Goods and Services Tax Act and the relevant State

Goods and Services Tax Act which in the present case is the Haryana Goods and Services Tax Act, 2017 and thereafter analyse the effect of the GST laws.

7. Under Section 3 (a), the sale and purchase of goods which occasions their movement from one State to another are deemed to take place in the course of inter-State trade or commerce. Such transactions are covered under the CST Act. In the present case the oil companies viz Indian Oil Company Ltd. and Bharat Petroleum Company Ltd., sold natural gas to the petitioner. The natural gas was sold in Gujarat and brought to petitioner's power plant in Haryana. The petitioner uses the natural gas as raw material for the generation of electricity. The sale and purchase of natural gas therefore takes place in the course of inter-state trade or commerce.

8. The definition of 'goods' in Section 2 (d) prior to the amendment of 2017 included all material, articles, commodities and all other movable property, excluding news papers, actionable claims, stock, shares and securities. Natural gas therefore was included in the term 'goods'. Under Section 6 every dealer under the CST Act is liable to pay tax on all sales of goods other than electrical energy effected by him in the course of inter-state trade or commerce. Thus the oil companies were liable to pay tax under the CST Act in respect of the sale of natural gas.

9. Under Section 9 sales tax is levied by the Government of India but is to be collected in the State, from which the movement of goods commenced. Under Section 9 (2) the authorities empowered to re-assess,

collect and enforce payment of tax under the general sales tax law of the appropriate State are to do so even on behalf of the Government of India with respect to the tax due under the CST Act.

10. As per Section 7 (1) of the CST Act, every dealer who was liable to pay tax under the CST Act was required to make an application for registration under the CST Act. The petitioner does not sell natural gas. Nor does it sell electrical energy outside the State of Haryana. It is therefore not liable to pay tax under the CST Act.

However, under section 7 (2), a dealer though not liable to pay tax under the CST Act but liable to pay tax under the sales tax law of the appropriate State or where there was no such law in force in the appropriate State or any part thereof any dealer having a place of business in that State could apply for registration under the CST Act. A dealer registered under Section 7 was termed as a registered dealer for the purpose of the CST Act. The petitioner was admittedly registered under the CST Act and was therefore a “registered dealer” within the meaning of the expression in section 2 (f) read with section 2 (d) and 7 (2).

11. To sum up therefore the definition of “goods” in section 2 (d) prior to the amendment and as we will shortly indicate, even after the amendment of section 2 (d) includes natural gas. The petitioner is a dealer within the meaning of section 2 (b). The petitioner, as it was entitled to under section 7 (2), had itself registered under the CST Act. The petitioner is therefore a “registered dealer” within the meaning of section 2 (f).

12. Section 8 of the CST Act prescribes a lower rate of tax on sales

in the course of inter-State trade or commerce in respect of “every dealer” who sells to a registered dealer goods of the description referred to in sub-section (3). As per sub-section (3) of Section 8 of the CST Act, the goods referred to in sub-section (1) are goods of the class or classes of goods specified in the registration certificate of the dealer being purchased for use in the generation or distribution of electricity or any other form of power.

The “dealer who sells” are the oil companies who sell the natural gas to the petitioner. The “registered dealer” is the petitioner. The goods of the description referred to in sub-section (3) is the natural gas for natural gas is referred to in the petitioner's certificate of registration and is used by the petitioner in the generation or distribution of electricity.

Hence under section 8 (1) the oil companies are liable to pay tax at the lower of the rates mentioned therein.

13. This however is subject to another requirement which is stipulated in section 8 (4). Sub-section (4) provides that this reduced rate of tax could be availed only on the dealer selling the goods on furnishing a declaration in the prescribed time and in the prescribed manner viz. Form ‘C’ in the present case.

A reading of Section 8 of the CST Act and Rule 12 of the CST (R&T) Rules along with Rule 7 of the CSTH Rules shows that ‘C’ Form is to be issued by the tax authorities of the State in which the purchaser of goods is based. The ‘C’ Form would be given to the seller who would in turn furnish the same to the prescribed authority for claiming a lower rate of tax.

14. In the present case, the petitioner purchased natural gas from the Oil Companies from Gujarat. The sales occasioned the movement of natural gas from Gujarat to Haryana. The petitioner is a registered dealer in the State of Haryana. The Haryana authorities had been issuing 'C' Forms to the petitioner which were given to the Oil Companies in Gujarat who produced the same before the Gujarat tax authorities and were assessed at a reduced rate of tax. This continued till the implementation of the Goods & Service Tax.

The question is whether the petitioner continues to be entitled to the 'C' Forms after the CGST Act, 2017. We think it is.

15. 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, reads 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.”

16. After implementation of the GST Act with effect from 01.07.2017, the definition of 'goods' under the CST Act was amended. The amended definition of 'goods' now covers only six items. What is important is that natural gas is one of them.

17. The definition of 'goods' in section 2 (52) of the CGST Act is very wide. It includes every kind of movable property, excluding money and

securities but including actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. Section 9 (2) of the CGST Act provides that petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel shall be levied tax under the CGST Act from the date as notified by the Government on the recommendations of the Council. Sections 2 (52) and 9 (2) of the HGST Act are similar to Sections 2 (52) and 9 (2) of the CGST Act.

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.

18. Section 174 of the HGST Act, 2017 repeals the Haryana Value Added Tax Act, 2003 (for short, 'HVAT Act'), except in respect of goods included in the entry 54 which as noted above includes natural gas. Thus the HVAT Act, 2003 continues to remain in operation qua natural gas. Moreover under Section 9 (2) of the HGST, 2017, the State tax inter-alia on natural gas shall be levied with effect from such date as may be notified by the Government. The Government has not as yet notified a date.

19. The net effect therefore is that even after the implementation of the CGST Act, the items mentioned in amended entry 54 are governed by the CST Act. Further, a notification under Section 9 (2) of the HGST Act, 2017 not having been issued natural gas continues to be covered under the CST Act.

20. After the implementation of the CGST Act and the aforesaid

amendment, the petitioner continued to make inter-state purchases of natural gas from the Oil Companies in Gujarat as before. When it applied for the issuance of 'C' Forms, the State of Haryana refused the same. The stand taken is that after the implementation of the CGST Act, the petitioner is not entitled to make inter-state purchases of natural gas on the strength of 'C' Forms.

21. Mrs. Talwar contends that the ingredients of Section 8 (1) would be met only if the petitioner is liable to pay sales tax under the HVAT Act and that registration under the HGST Act is not relevant.

22. The submission is not well founded. As Mr. Ankur Saigal, the learned counsel appearing on behalf of the petitioner rightly submitted, the contention proceeds on the erroneous basis that only a dealer registered under the HVAT Act is covered by section 7 (2). The plain language of section 7 (2) does not contain such a limitation. The petitioner is not liable to pay tax under the CST Act but it is liable to pay tax under the HGST Act, 2017 as it sells electricity within Haryana. Under Section 7 (2) of the CST Act which applies to the petitioner, a dealer liable to pay tax under the sales tax law of the appropriate State may apply for registration notwithstanding that he is not liable to pay tax under the CST Act.

'Sales tax laws' have been defined under Section 2 (i) of the CST Act to mean the law for the time being in force in any State for levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax laws. The definition is inclusive in nature. It is not restricted to any particular sales tax

enactment. The HGST Act is also a law in force in the State of Haryana for levy of taxes of sale and purchase of goods. The HGST Act is not excluded from the ambit of section 7 (2) of the CST Act either expressly or by necessary intendment. In order to accept the contention raised by the State that the petitioner ceases to be a registered dealer under the CST Act, a restricted meaning will have to be given to the definition of 'sales tax law' to mean that it only covers the HVAT Act and not any other sales tax law such as the HGST Act. The taxable event under the HVAT Act was sale and under the HGST Act it is supply. It is important to note that supply includes sale. Hence, for the purpose of sales tax law, HGST Act would qualify on the same pedestal as the HVAT Act.

23. Section 9 of the HGST Act levies tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Section 7 of the HGST Act defines the scope of supply. It is an inclusive provision and includes all types of supply of goods or services or both such as sale, transfer etc.

In this background, it would be appropriate to note that the petitioner purchases natural gas and uses it for generation of electricity. Whereas for the sale of natural gas, the liability to pay tax is of the oil companies under the CST Act, the sale of electricity in the State of Haryana is leviable to tax under the HGST Act. There is no dispute that the sale of electricity is taxable under the HGST Act, though the rate of tax has been fixed at 0%. It has been laid down that even if the rate of tax on the goods is 0%, still it is a taxable item under the Act. The HGST Act thus falls within

the ambit of the words “sales tax law” of the appropriate State in Sections 7 and 8 of the CST Act. The words “sales tax law” is defined in Section 2 (i) to mean any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods. The HGST Act does so as is evident from Section 9 thereof which stipulates a tax on all intra-state supply of goods. Section 7 does not specify the state law that levies taxes on the sale or purchase of goods. Hence, any State law that does so including the HGST Act would fall within the ambit of Section 7 of the CST Act. If the HGST Act is not applicable the HVAT Act would be. Thus in either case the ingredients of Section 7 and 8 of the CST Act would be met.

24. The petitioner therefore fulfils all the requirements of Section 7 (2) of the CST Act. It is liable to pay tax in the State of Haryana under the HGST Act. Even though there is no liability under the CST Act, yet it will be a registered dealer under Section 7 (2) of the CST Act.

25. Mrs. Talwar then contended that the petitioner is not engaged in the business of re-selling the natural gas and is, therefore, not entitled to be issued ‘C’ Forms. The basis of the argument is that after the CGST Act came into force, the petitioner was not liable to pay any tax on electricity under the HVAT Act and it, therefore, ceases to be a registered dealer as per Section 7 (2) of the CST Act. Mrs. Talwar contended that the petitioner's registration under the CST Act lapsed on the commencement of the HGST Act and it ceased to have any effect. She contended that the petitioner does not sell within the State of Haryana or otherwise the same goods, namely natural gas, that it purchases from the Oil Companies in Gujarat. According

to her, the provisions of the CST Act and in particular Sections 7 and 8 thereof would apply only if the petitioner sold the same goods that it purchased viz. natural gas.

26. The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws. There cannot be any occasion to restrict the usage of 'C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in Section 2 (d) of the CST Act. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7 (2) of the CST Act. Section 7 (2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does section 7 (2) stipulate that an application for registration can be made or 'C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-state sale. A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of the Act.

27. There is another aspect of the matter that the registration certificate given to the petitioner under the CST Act till date has not been cancelled. As per Section 7 (4) of the CST Act, the registration certificate granted has to be amended or cancelled. The said provisions have not been

invoked.

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. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the petitioner shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax through the oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form.

(S.J. VAZIFDAR)
CHIEF JUSTICE

March 28, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes