NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 549 of 2017

- M/s Bhilai Wires Limited Industrial Area, Bhilai, District Durg, Chhattisgarh Through Its Dy. General Manager (F&A), Shri S.S. Neogi.

---- Appellant

Versus

1. State of Chhattisgarh Through Its Secretary, Commercial Tax Department Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

2. Additional Commissioner, Commercial Tax, Chhattisgarh, Raipur, Chhattisgarh.

3. Assistant Commissioner, Commercial Tax, Durg, Chhattisgarh.

---- Respondents

with

Writ Appeal No. 2 of 2018

- M/s Bhilai Wires Limited Industrial Area, Bhilai, District Durg, Chhattisgarh. Through Its Dy. General Manager (F&A), Shri S.S. Neogi.

---- Appellant

Versus

1. State of Chhattisgarh Through Its Secretary, Commercial Tax Department Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

2. Additional Commissioner, Commercial Tax, Chhattisgarh, Raipur, Chhattisgarh.

3. Assistant Commissioner, Commercial Tax, Durg, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Ashish Shrivastava, Advocate.
For Respondent/State	:	Shri Vikram Sharma, Panel Lawyer.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

Per P. R. Ramachandra Menon, Chief Justice

17.06.2019

1. The subject matter involved in both these appeals is having a common link, particularly with reference to the question whether the 'wires' manufactured using the 'wire rods' can be taxed separately, treating it as a different commodity. The matter had come up to for consideration before this Court earlier and based on the submission made by the learned counsel appearing for the Appellant that there was some inherent defect, which was sought to be rectified by causing the pleadings and proceedings in the writ petition to be amended, the question whether this could be permitted in the course of appeal was answered by another Bench of this Court leading to an order dated 31.08.2018, virtually permitting the Appellant to have the writ petition amended with liberty to the Respondent-State/Department to file additional return. The Appellant was required to furnish a paper book and then it was to be posted before the appropriate Bench. The operative portion of the said order reads as follows:-

> “9. For the foregoing, prayer for amendment is allowed. The petitioner shall incorporate amendment in the original writ petitions 7 days and thereafter the respondents may file additional return within next 3 weeks. After filing of additional return by the State, the petitioner shall file paper books within next 15 days. The matter shall thereafter be placed for hearing before the appropriate Bench.”

2. The learned counsel for the Appellant submits that the duty cast upon the Appellant has already been satisfied insofar as necessary amendment has already been effected, but the paper book could not be produced as the State/Department has not filed its return so far. It is pointed out that there is no lapse on the part of the Appellant.

3. The learned counsel represents the Government concedes that additional return has not been filed and further time, is sought for in this regard. We are of the view that there is no lapse on the part of the Appellant in not producing the paper book. However, coming to the basic issue as to the exigiblity of tax, the point raised by the Appellant is that the 'wires' manufactured from the 'iron rods' has already suffered tax, and hence it is not liable to be taxed again. This, according to the Appellant is the law declared by the Apex Court as per the decision in **Telangana Steel Industries & Others vs. State of A.P. & Others** reported in **1994 Supp (2) SCC 259**. It is brought to the notice of this Court that though the scope of the dictum therein was considered in **TVL K.A.K. Anwar & Co. vs. State of T.N.** in **(1998) 1 SCC 437,** according to the learned counsel, the observation and finding in the latter case cannot stand against the Appellant, as the law declared by the Apex Court remains intact.

4. On going through the verdict passed by the learned Single Judge, it is seen that no dispute is raised with regard to the law declared by the Apex Court or by this Court as to the exigibility of tax upon the commodity concerned. But the finding of the learned Single Judge in the concluding paragraph i.e. 'paragraph 11' of the verdict under challenge is that, unlike the case dealt with by the Apex Court and by this Court earlier, in the instant case, the 'wire rods' used for manufacturing of the 'wires' by the Appellant have not suffered tax at all, at any point of time. This being the position, there cannot be a 'set off' as claimed by the Appellant, and in the said circumstances interference was declined and the writ petition came to be dismissed as per judgment dated 10.10.2017.

5. Shri Shrivastava, learned counsel appearing for the Appellant submits that there is a factual error in the verdict passed by the learned Single Judge in holding that the 'iron rods' used for manufacturing the iron 'wire' has not suffered any tax. As a matter of fact, tax has already been payed in respect of the 'iron rods' used for manufacturing the iron wires; submits the learned counsel. We find

that a specific ground was raised by the Appellant particularly in paragraph 5.2 of Writ Petition No. 336 of 2006 as well as in the present appeal ('Ground E'). But whether the said point was argued before the learned Single Judge, whether any materials were produced to establish this fact, or whether the said position as contended by the Appellant was caused to be considered by the Department/State at the first instance etc. are not revealed from the proceedings. Hence, we are not in a position to have any 'fact adjudication' in this regard. If the observation made by the learned Single Judge, that the 'iron rods' used for manufacturing the iron wires has not suffered any tax is correct, there cannot be any challenge against the verdict. But as contended by the Appellant, if the factual position is something else, it may have to be looked into, with reference to the law declared by the Apex Court as mentioned above. Whether there was any omission in considering this aspect is a matter to be considered by the learned Single Judge. This comes with the realm and power of review, so as to 'rectify the error apparent on the face of record', if any, before proceeding with the matter by the appellate Court.

6. In the said circumstances, we find it appropriate to relegate the Appellant to move the learned Single Judge by way of appropriate proceedings with regard to the specific observation made in 'paragraph 11' of the judgment under challenge. We are not making any opinion as to whether there is any error apparent on the face of the record or not. Taking note of the fact that the appeal was pending before this Court right from 2017, we find it appropriate to grant two weeks' time from the date of receipt of a copy of this judgment to file the necessary proceedings as above, in accordance with law. We reiterate, we are not expressing anything with regard to the merits involved and the issue is left open to be considered by the learned Single Judge in accordance with law.

7. Once it is found that the matter requires to be considered on merit, and it is ordered accordingly, it necessarily has to be with reference to all the pleadings

as put forth from the part of the Appellant in the amended writ petition (as permitted to be filed by this Court vide order dated 31.08.2018) and also with reference to the additional return/contentions to be raised by the Government before the learned Single Judge within such time as to be provided by the learned Single Judge.

8. Both the appeals are disposed off accordingly.

Sd/-	Sd/-
(P.R. Ramachandra Menon) **Chief Justice**	**(Goutam Bhaduri)** **Judge**

Brijmohan