IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11321 of 2002
Date of decision: 25.2.2020

M/s Larsen & Toubro Limited
.. Petitioner

v.

The State of Haryana and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

...

AVNEESH JHINGAN, J.

The writ petition is filed seeking quashing of impugned orders passed by the Assessing Authority and the Appellate Authorities whereby the claim of stock transfer was dis-allowed and the transaction was held inter-State sale of goods used in execution of works contract.

The relevant facts are that the assessment year involved is 1991-92. The petitioner was engaged in the business of manufacturing, trading and execution of turnkey contracts and had a manufacturing unit at Faridabad. During the relevant year, the petitioner executed a contract with a Rajasthan Government Undertaking for designing, engineering, supplying, fabrication, testing, commissioning and guaranteeing of plants of contractee at Jhamarkota Mines, Rajasthan. The goods worth ₹34,61,540/- were stock transferred from Haryana to contract site at Rajasthan. The Assessing Authority finalised the assessment on 25.4.1995, held the contract to be a divisible contract and taxed the goods sent for works contract under the Central Sales Tax Act, 1956 (for short, 'the Act'). The 1st Appellate Authority dismissed the appeal on 1.1.1996. Appeal to Tribunal met the same fate on 15.2.1997. The review filed was also dismissed. The relevant portion of the tribunal order in appeal is quoted below:

> "Therefore it is quite clear that CST Act is applicable as far as sale of goods used in the execution of work contracts are concerned and there is no bar on the imposition of inter-State sales tax in this Act. The first appellate authority has also gone into the question of pricing factor. He has rightly observed that there is sale of material as is evident from the price quoted for different items in break up of prices.
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> In view of these background, the second appeal has no force and the same is dismissed."

Learned counsel for the petitioner contended that in spite of 46th amendment to the Constitution of India, there was no amendment made under the Act in the relevant year, the definition of 'sale' was amended by Finance Act, 2002 and in such circumstances no tax could have been imposed on inter-State works contract sales.

Learned counsel for the State argued that as there was a inter-State sale, the same was liable to be taxed.

The 46th amendment to the Constitution introduced a fiction to bring within the ambit of 'sale', goods involved in execution of works contract. The General Sales Tax Act of various States were amended accordingly, however in the Act, the definition of 'sale' was not amended till 2002. There was no deeming fiction available under the Act for taxing the goods involved in execution of the works contract. During the relevant year, no tax could be levied under the Act for goods sent to the other State for execution of works contract. The 46th amendment in itself was not enough to tax the deemed sale. The issue has been dealt with by the Full Bench of this Court in **M/s Thomson Press (India) Ltd. and another v. The State of Haryana and another, 1996(1) PLR 345**. The relevant portion is quoted below:

> "In view of the above we hold and order that:-
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> (i) In the facts and circumstances of these cases, the printing of lottery tickets amounts to execution of a 'works contract'.
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> (ii) The State of Haryana is not competent to levy sales tax on the transfer of property in goods involved in the execution of a 'work contract' in a case where the order for printing of lottery tickets has been placed by another State, and there is movement of the end product in the course of inter-State trade and commerce.
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> (ii) Clause 29-A which was added in Article 366 by the 46th Amendment of the Constitution only embodies an enabling provision. It does not, however, *ipso facto* authorise the State Legislature to levy taxes on the sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade and commerce. The power in this behalf vests exclusively in the Parliament and unless the provisions of the Central Sales Tax Act, 1956 are amended, the fiction introduced under the State

Act by the Haryana Legislature would not permit the levy of sales tax.

(iv) Review Application No. 147 of 1993 filed by the petitioner is allowed. The order of assessment dated January 14, 1992, a copy of which has been appended as Annexure P-1 with CWP No. 337 of 1992, is set aside."

In **M/s East India Cotton Manufacturing Company Limited, Faridabad v. State of Haryana and another, 1993 (90) STC 221,** this Court opined as under:

"We sum up our conclusions as under:-

(1) Clauses (j) and (1) of Section 2 of the HGST Act, 1973, including proviso to Note 2, Note 3 of the HGST Act, 1973, are *intra vires.* The Constitution and the principles formulated in the Central Sales Tax Act, 1956, in pursuance of Articles 269(3) and 286(2) of the Constitution. To that extent constitutional validity of Act No. 1 of 1989 is upheld.

(2) The value of goods falling within the purview of various sub-clauses of clauses (j) and (1) of section 2 of the HGST Act, 1973, is exigible to tax.

(3) Inter-State sale is outside the scope of the HGST Act, 1973, for purposes of levying of tax.

(4) The particular activity of processing of grey cloth into finished cloth by East India Cotton Manufacturing Company Limited in the facts and circumstances amounts to inter-State sale.

(5) It is open to the Taxing authorities to split up a composite works contract and levy tax on that component of the contract which is covered by one or the other sub-clause of clause (j) or clause (1) of Section 2 of the HGST Act, 1973.

(6) Inspite of wider definition of expression tax on sale or purchase in clause (29-A) of Article 366 by the Constitution (Forty-Sixth) Amendment Act, 1982, tax can be levied only on the basis of the existing provisions of the Central Sales-tax Act, 1956, and not on the basis of various sub-clauses of clause (29-A) of Article 366 as far as central sales-tax is concerned.

(7) The Taxing Authorities shall determine in respect of which goods, the property passes to the contractee in terms of sub-clause (ii) of clause (j) or clause (1) of Section 2 of HGST Act, 1973, in the facts and circumstances of such case.

(8) When the question is raised, the Taxing authorities have to determine the facts and circumstances of each case whether the transaction is an intra-State sale or an inter-State sale.

(9) Exemption from sales-tax (subject to the conditions, if any, mentioned therein) under sections 6 and 15 read with Schedule 'B' to HGST Act, 1973, is with reference to goods as such goods. The exemption does not apply if any case falls in any of the sub-clauses of clause (ii)."

The writ petition is allowed. The impugned orders so far as levying of tax on inter-State sale of goods used in execution of works contract are set aside.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

25.2.2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No