



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 876 OF 2017

AND

WRIT PETITION NO. 856 OF 2018

WRIT PETITION NO. 876 OF 2017

1. Vedanta Limited, an existing company within the meaning of Companies Act, 1956, having its office at Sesa Ghor, 20, EDC Complex, Patto, Panaji, Goa, India, through its authorized Signatory, Benicio Menezes, S/o Louis Menezes, 48 years age, married, R/o Colvale Bardez, Goa.

2. Gregory Dsouza, S/o Michael Dsouza, Major of age, married, R/o Porvorim, Salvador do Mundo, Paithona, Bardez, Goa, 403521, Shareholder of the Petitioner No. 1 ... Petitioners Company.

V e r s u s

1. Union of India, Through the Secretary Department of Revenue, Ministry of Finance, Government of India. North Block, New Delhi-110001.

2. State of Goa, Through the Secretary, Finance Department, Porvorim, Goa.

3. The Assistant Commercial Tax Officer, Panaji ward (Appropriate Assessing Authority), Panaji, Goa, First Floor, PA Building, Near A.I.R., Altinho, Panaji, Goa, Pin Code-403001.

4. Commissioner of Commercial Taxes,

Vikrikar Bhawan, MG Road, Panaji, Goa,
403001.

5. Additional Commissioner, Commercial
Taxes, Panaji, Goa. ➡ Amendment carried out as per order
dated 09.01.2019.

6. The State of Karnataka, Through the
Deputy Commissioner of Commercial Taxes
(Audit)-4-1, D.V.O.04, V.T.K.02, Koramangala,
Bengaluru 560034, Karnataka.

7. Reliance Industries Ltd. No. 62/2. Reliance
Building, 2nd Floor, Richmond Road,
Bengaluru-560025, Karnataka.

Amendment carried out as per
order dated 30.09.2019 in MCA
No. 73.2024(F).

... Respondents

**AND
WRIT PETITION NO. 856 OF 2018**

1. Sesa Mining Corporation Limited an
existing company within the meaning of
Companies Act, 1956, having its registered
office at Sesa Ghor, 20 EDC Complex, Patto
Panaji, Goa, India, through its authorized
signatory, Benicio Menezes, S/o Louis
Menezes, 48 years age, married, R/o Colvale,
Bardez, Goa.

2. Mr. Azad Shaw, S/o Shri Riya Ram Shaw,
Major in age, Indian National, Resident of flat
205, Building 3, Kamat Royale, Caranzalem, ... Petitioners
Panaji-Goa, Shareholder of the Petitioner No. 1
Company.

V e r s u s

1. Union of India, Through the Secretary
Department of Revenue, Ministry of Finance,
Government of India, North Block, New Delhi-
110001.

2. State of Goa, Through the Secretary,

Finance Department, Porvorim, Goa.

3. The Assistant Commercial Tax Officer, Panaji ward (Appropriate Assessing Authority), Panaji, Goa,

4. Commissioner of Commercial Taxes, Vikrikar Bhawan, MG Road, Panaji, Goa 403001.

5. The State of Karnataka, Through the Deputy Commissioner of Commercial Taxes (Audit) - 4-1, D.V.O.04, V.T.K.02, Koramangala, Bengaluru 560034, Karnataka.

6. Reliance Industries Ltd., No. 62/2. Reliance Building, 2nd Floor, Richmond Road, ... Respondents Bengaluru-560025, Karnataka.

Amendment carried out as per order dated 19.08.2024 in MCA No. 328.2024.

Mr. Gopal Krishna Mudra, Advocate for the Petitioners.

Mr. Raviraj Chodankar, Central Government Standing Counsel for Respondent no.1.

Mr. Devidas Pangam, Advocate General with Mr. Deep Shiroadkar, Additional Government Advocate for Respondent nos. 2, 3 and 4.

CORAM: BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.

RESERVED ON : 2nd JULY 2025
PRONOUNCED ON : 28th JULY 2025

JUDGMENT (Per Bharati Dangre, J.)

1. The two Petitions before us are, inter alia, filed by the Petitioners engaged in mining in ores for sale and in the wake of the new regime with the introduction of Goods and Service Tax Act (GST,

Act), which replace the existing Goa Value Added Tax Act, 2005 (GVAT, 2005) and the Central Sales Tax Act, 1956, (CST Act) are aggrieved by the action of the Respondents based on trade Circulars, refusing them Form 'C' in terms of the CST Act, which would enable them to procure High Speed Diesel (HSD) at a concessional rate and this refusal is on the premise that the Petitioners have ceased to be 'Dealer' under the CST Act. This action according to the Petitioners, the Dealers under the CST Act, has resulted in denial of the privilege conferred under Section 8(3) of the CST Act in respect of the procurement of the HSD, at concessional rate against Form 'C'. Though the Petitions involve common question, we briefly highlight the factual position qua each Petition.

In Writ Petition No. 876 of 2017

2. Petitioner no. 1, Vedanta Ltd., a company incorporated under the provisions of Companies Act, 1956, with its registered office being situated in Panaji, Goa, is inter alia, engaged in mining of iron ores for sale and claim to be a bulk purchaser of 'High Speed Diesel' (HSD) used for mining of iron ores. The Petitioner no. 2, is the shareholder of Petitioner no.1 Company.

The present Petition is filed as the Petitioners are aggrieved by the action of the Respondents in denying of issuance of declaration in Form 'C' as required by the Petitioners to procure HSD from outside

State of Goa at concessional rates of Central Sales Tax Act, 1956 (CST Act 1956) on the premise that the Petitioner ceases to be a Dealer under the CST Act, 1956 w.e.f. 01.07.2017 and also on a premise that the registration of the Petitioner under the CST Act has become infructuous as the Petitioner is not liable to pay tax under the Goa Value Added Tax Act, 2005 or the CST Act, 1956.

In short, the Respondents have proceeded against the Petitioner by presuming that on introduction of Goods and Service Tax Act, 2017 (GST Act), the procurement of the HSD under concessional rates under Section 8 of the CST Act is permissible only if the Dealer is engaged in the sale of HSD.

3. The Petition has therefore assailed the order dated 25.09.2017 passed by the Commercial Tax Officer, Panaji, revoking the declaration Form 'C' in exercise of powers conferred under Section 21 of the General Clauses Act, 1897 and declaring that the declaration Form 'C' issued to any person/selling dealer, shall be of no consequence since it stand revoked.

This was followed by the Order dated 06.02.2018, which partly allowed the claim of Petitioners in respect of diesel used at Codli mine but rejection of rest of the claim. This Order being assailed before the Additional Commissioner of Commercial Tax and Appellate Authority under Section 9(2) of the CST Act, read with Rule 31, 32, 33, 34 and 35

of the Goa Value Added Tax Rules, 2005, by an Order dated 28.06.2018, the Order in original is upheld and follow the same reasoning and dismiss the appeal.

As a consequence, the Petition also seek direction to the Respondents to process the Petitioner's application for issuance of Form 'C' within a reasonable time frame.

Writ Petition No. 856 of 2018

4. This Petition is filed by Sesa Mining Corporation Limited along with its shareholder Mr. Azad Shaw, who is aggrieved by the Order dated 29.01.2018 passed by the Assistant Commissioner Commercial Tax Officer, Panaji, an Order passed on an application for issuance of declaration of Form 'C' for inter-state purchasers of High Speed Diesel (HSD). The said Petition also raised challenge to the trade circulars, which form the basis of the impugned decision.

As far as Sesa is concerned, it is pleaded that pursuant to the refusal granted of declaration Form 'C' in favour of Petitioner, the Respondent no. 6, a registered person under Karnataka Value Added Tax Act, 2005 and the CST Act and one of the selling dealers of the Petitioner have deposited the tax with the Respondent no. 5, the authority responsible for administration and levy and collection of VAT and CST in Karnataka and the Respondent no. 6 being the Petitioner's selling dealer, has encashed the bank guarantees and paid the amount

to Respondent no. 5. The Petition in Writ Petition no. 856 of 2016, therefore, seek refund of CST of Rs.1,23,38,392/- including interest paid by Respondent nos. 5 and 6.

5. We have heard learned Counsel Mr. Gopal Krishna Mudra for the Petitioners, Mr. Raviraj Chodankar, Central Government Standing Counsel for the Union of India and the learned Advocate General Mr. Devidas Pangam along with Mr. Deep Shirodkar, Additional Government Advocate, for Respondent-State.

The Writ Petition no. 876 of 2017 having been already admitted on 04.05.2018, on completion of pleadings, it is taken up for final hearing and as far as Writ Petition No. 856 of 2018 is concerned, since it was tagged along with the Petition of Vedanta Limited by Order dated 12.03.2019, on completion of pleadings, both the Petitions are taken up for final hearing.

6. Focusing our attention on Writ Petition No. 876 of 2017, filed by Vedanta Limited, the Petitioner no. 1 engaged in mining of iron ore for sale claim to be largest exporters of iron ore in India and amongst other things procured HSD, which is used for mining iron ore for sale.

Vedanta Limited, erstwhile known as Sesa Goa Limited, secured registration certificate under Section 18 of the Goa Value Added Tax

Act, 2005 on 27.12.2017, which was renewed from time to time and obtained a registration as a Dealer.

The Dealer changed the name of the business from Sesa Goa Limited to Sesa Starlite Limited w.e.f. 20.09.2013 and was granted the renewal of the certificate from 2014 to 2017 in that name. On 21.05.2019, the Dealer changed the name of business from Sesa Starlite Limited to Vedanta Limited and therefore the subsequent registration certificate is obtained in the name of 'Vedanta Limited'.

However, the registration details clearly provide that the Company conducted business since 1970 and incurred the VAT liability from 01.04.2005. Similarly, the Company also secured a registration under the Central Sales Tax Act, 1956, with its effective date of registration being 06.07.1963 in the name of Sesa Goa Limited. The CST Act (Registration and Turnover) Rules, 1957, in Form 'B' certified Sesa Goa Limited to be a Dealer under Section 7(2) of the Central Sales Tax Act, 1956 and then the nature of its business was set out of 'mining and exporting of iron ore'.

The said Certificate include the following clause :

“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 sub-section (4) of the said section:-

- (a) for resale.
- (b) for use in the manufacture or processing of goods for sale.

(c) for use in mining Machinery, spares, explosives, fuses, detonators, tyres and tubes, paints batteries & other mining equipments.

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

(e) for use in the packing of goods for sale/resale.

The dealer extracts in mining, the following classes of goods
- Iron ore (lumps & fins) -”

There was an amendment in the registration certificate from time to time and with effect from 21.08.1994, the items included in the registration certificate for use in the manufacture and processing for goods from sale specified thus :

“H.S.D. (high speed diesel) & petrol which are used for running and maintenance of machinery for mining and processing of iron ore for sale, furniture and fittings used in the manufacture for sale of barges and other vessels.”

7. Vedanta Limited was issued Form 'C' in form of a declaration [See Rule 12(1)] on 24.8.2017 with its existing registration since 06.07.1963, with reference to Reliance Industries Limited, Karwar, Karnataka. In regards the goods used in manufacturing/processing for goods of sale as per the annexure appended thereto and this covered HSD with the purpose being indicated as manu/processing. The invoice details along with the Form 'C' certificate against the invoice are placed on record as a part of the Petition making it clear that the statutory declaration Form 'C' issued in favour of of the Petitioner against the invoice of commodity HSD to be sold by Reliance Industries

Limited from 2017 in the wake of Form 'C' certificate issued from 24.08.2017.

8. In the Petition filed by Sesa Mining Corporation, the background facts are somehow similar as it can be discerned from the Petition that Dempo Mining Corporation received registration certificate under Section 18 of the Goa Value Added Tax Act, 2005 on 27.12.2007, and the certificate described him to be a Dealer manufacturing for sale the following classes of goods :

- “(i) sale of iron ore;
- (ii) sale of old vehicles;
- (iii) sale of scrap;”

M/s. Dempo Mining Corporation changed to Dempo Mining Corporation Private Limited in the year 2002 and w.e.f. 19.11.2010, the Dealer changed its name to M/s. Sesa Goa Mining Corporation Limited. This certificate received renewal from time to time but the Dealer changed its name to Sesa Mining Corporation and, therefore, from 2011 onwards, the renewal of registration certificate under the GVAT Act, 2005 is granted in the name of Sesa Mining Corporation Limited.

The certificate in favour of Dempo Limited, issued on 21.06.1963 while it registered the Private Company as Dealer under Section 7(2) of the Central Sales Tax Act, 1956, described the business as wholly-mining and the class(es) of goods specified for the purpose of sub-section (1) and (3) of Section 8, and the sales of the goods in the course of inter-state trade to the Dealer was declared to be taxable at

the rates subject to the provisions of sub-section(4) and the said goods were set out as below :

“...

(c) for use in mining, Surveying instruments with accessories..... fuel.....”

The certificate issued in favour of Dempo Mining was also amended from time to time as regards the inclusion of various goods which would be entitled for the benefit of Section 8 of the CST Act. Sesa Mining Corporation Limited also preferred an application for issuance of Form 'C' for inter-state purchase of HSD with Reliance Industries Limited being seller from the year 2017.

The Petitioner continued to avail the benefit as against the class(es) of goods as set out in its certificate of registration till the occurrence of the subsequent events.

9. In exercise of the powers conferred under Article 246A read with the Union List and the State List respectively, the Central Goods and Services Tax Act, 2017 ('CGST Act') and the Integrated Goods and Services Tax Act, 2017 ("the IGST Act") were enacted by the Parliament and respective State Goods and Services Tax Acts ("the SGST Acts") were enacted by each of India's State Legislature and Union Territory. The CGST Act and SGST Acts levy tax (GST) on the "inter-State" supply of goods and

services, while the IGST Act levies tax (GST) on the “inter-State” supply of goods and services.

The petroleum products i.e. Petroleum crude, High Speed Diesel, Motor spirit (commonly known as petrol), Natural gas and Aviation Turbine Fuel (‘specified petroleum products’), is declared to remain outside the ambit of GST till a notified date. Further, GST Council, a Constitutional body is set up under Article 279A of the Constitution of India, have been conferred the powers to recommend the date on which GST would become leviable on the specified petroleum products. Till such notified date, the levy under Central Excise Act, CST Act and State VAT laws on specified petroleum products would continue.

Accordingly, the powers conferred on the Central Government vide Entry 84 of the Union List to levy duty of Excise is inter alia restricted to the manufacture and production of the specified petroleum products in India. Similarly, the powers conferred on the State Government under Entry 54 of the State List to levy VAT on intra-state sale of goods is inter alia restricted to sale of specified petroleum products.

10. The Central Goods and Services Tax Act, 2017, (CGST Act, 2017), provided for levy and collection on tax on intra-State supply of goods or services or both by the Central Government and Section 9 thereof, prescribe that there shall be levied a tax called the Central Goods and

Services Tax Act on all inter-State supplies of goods and services or both, except on the supply of alcoholic liquor for human consumption and undenatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption at such rate as may be notified by the Government on the recommendations of the GST Council.

Sub-section(2) of Section 9 prescribed that the Central Tax on the supply on the 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 recommendations of the Council.

Similarly, Goa Goods and Services Tax Act, 2017, came to be enacted, with Section 9 as its charging section, prescribing that the State Goods and Service Tax is levied on intra-State ‘supplies of goods and services’ at such rate as may be notified by the Government on recommendations of the GST Council and an identical provision in form of sub-section (2) of Section 9, related to the levy on supply on Petroleum crude, High Speed Diesel, Motor spirit (commonly known as petrol), Natural gas and Aviation Turbine Fuel as may be notified by the Government on recommendations of the Council.

11. In the regime which existed prior to insertion of Article 246-A in the Constitution and the enactment of the two statutes in form of Central Goods and Service Tax Act, 2017 and Goa Goods and Services

Tax Act, 2017, the existing regime was the Goa Value Added Tax Act, 2005 and Section 3 thereof provided that every dealer whose turnover of sales during the year exceeds for a specified limit, shall be liable to pay tax under the Goa VAT Act, 2005 and Section 3(5) prescribed that for the purpose of calculating the turnover for liability to tax, the term turnover of sales shall be taken, whether such sales are taxable or not or of taxable goods or not.

The term 'goods' was defined in Section 2(p) of the State VAT Act to mean, Petroleum crude, High Speed Diesel, Motor spirit, Natural gas, Aviation Turbine Fuel and alcoholic liquor for human consumption.

12. The CST Act, 1956 is an Act of the Parliament formulating the principles for determining when a sale or purchase of goods took place during the course of intra-State trade of commerce or outside the 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 Intra-State trade of commerce. Section 7 of the said Act provide for registration of Dealers and every dealer liable to pay tax under the said Act should obtain a registration under the CST Act. Sub-section (2) of Section 7 make it clear that 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, notwithstanding

the fact that he is not liable to pay tax under the CST Act, must obtain registration under the Act .

The CST Act, 1956, defined 'goods' in Section 2(d) as below :

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

13. Section 8(3) of the CST Act read with Rule 13 of the Central Sales Tax (Registration & Turnover) Rules, 1957 inter alia provides specific purposes for which Form C can be issued and it extends the benefit of sale of goods to a registered dealer on payment of concessional rate of CST on fulfillment of the following conditions; (i) The goods should be specified in the purchasing dealer's registration certificate as being intended for resale by him or for use by him in the manufacture or processing of goods for sale or telecommunication network or in mining, or in the generation or distribution of electricity or any other form of power; and (ii) The purchasing dealer shall furnish a duly signed declaration in Form C to the selling dealer who would in turn furnish Form C to the prescribed authority.

In terms of Section 8(3) of the CST Act, the goods for use in mining are eligible for the concessional rate of CST against Form 'C'.

In the wake of decision of the Hon'ble Apex Court in **Chowgule and Co. Pvt. Ltd. v. Union of India**¹ and a decision

¹ (1981) 1 SCC 653

of this High Court in the case of **CIT Vs. Sesa Goa Ltd.**², the expression 'mining' would encompass within its ambit all the activities from extracting of ore to selling it for export as, (i) extraction of ore from the mine; (ii) conveying the ore to the dressing plant; (iii) washing, screening and dressing the ore; (iv) conveying of the ore from the mine site to the riverside; (v) transport of the ore from the river side to the harbour by means of barges ; (vi) stacking of the ore at the harbour in different stock piles according to its physical and chemical composition; and (vii) blending of the ore from different stock piles with a view to producing ore of the required specifications and loading it into the ship by means of the mechanized ore handling plant.

14. In the existing regime, the Petitioners' registration certificate under the CST Act included various goods, which included fuel i.e. High Speed Diesel (HSD) for mining of iron ore for sale.

In the light of the statutory regime, in respect of the HSD purchased from outside State of Goa, Petitioners have obtained Form 'C' from the relevant authority and provided the same to the supplier of HSD so as to procure the same at concessional rate of CST at 2% in terms of Section 8 of the Act read with Rule 13 of the Central Sales Tax Act Registration and Turnover Rules, 1957. A registered dealer is entitled to procure the goods from another registered dealer situated in another State on payment of concessional rate of CST on fulfilling the

² 2004 266 ITR 126 Bom

two conditions; (i) The goods should be specified in the purchasing dealer's registration certificate as being intended for resale by him or used by him in the manufacture or processing of goods for sale or telecommunication network or in mining, or in the generation or distribution of electricity or any other form of power; and (ii) The purchasing dealer shall furnish a duly signed declaration in Form C to the selling dealer who would in turn furnish Form C to the prescribed authority.

15. It is the case of the Petitioners that pursuant to the introduction of the GST regime w.e.f. 01.07.2017, the Petitioners migrated into GST regime using its Goa VAT registration number. However, since the Petitioners business continued to involve purchase of HSD, which was specifically excluded from the ambit of GST but continued to attract applicable VAT and CST, the Petitioner continued to pay CST and also retained the VAT registration and did not apply for its cancellation as the Petitioner was of the opinion that there is no requirement under the GST Act for automatic cancellation of such registration.

The Petitioners, therefore, made online application for issuance of declaration in Form 'C' pertaining to invoice dated 21.07.2017 and the Assistant Commissioner of Sales Tax Office, Panaji, approved the online request and issued statutory declaration in Form 'C' dated

24.08.2017 for Rs.9,46,762/- pertaining to the purchased invoice dated 21.07.2017.

16. The Petitioner however was served with a show cause notice on 04.09.2017 directing him to show cause as to why the declaration Form dated 24.08.2017 should not be revoked and the same was issued by inadvertence. The notice specifically justified its issuance by stating that the registration of the Petitioner under the Goa Value Added Tax Act, 2005 and CST Act, 1956 has become infructuous w.e.f. 01.07.2017 and, therefore, the dealer is not eligible for issuance of any declaration form for any intra-State purchase made on or after 01.07.2017 and therefore the authority intend to revoke the same by exercising the powers conferred under Section 21 of the General Clauses Act, 1897.

The show cause notice was subjected to challenge in Writ Petition filed before the Bombay High Court at Goa and a request was made to keep adjudication of the matters in abeyance till the final disposal of the Petition. However, Respondent no. 3 proceeded to adjudicate the show cause notice and pass the impugned Order dated 25.09.2017 and the Petitioner filed the present Writ Petition challenging the said Order.

The said order is primarily based upon two essential facts namely, M/s. Vedanta Limited, was a dealer registered under the Goa Value Added Tax Act, 2005 and secured registration under the CST Act, 1956 and consequent to the passing of the 101st Amendment Act 2016,

which paved the way for enactment of GST and CGST and integrated GST Act, the power of the State and Union of India to levying tax of six goods i.e. alcoholic liquor for consumption as has been reiterated and has been retained whereas all other goods have been subjected to levy of GST and the CST Act. In the wake of the aforesaid development, it was concluded that the registration granted earlier under sub-section (1) of Section 7 of the CST Act, the dealer whose liability has not ceased has become infructuous and therefore the attempt on part of the dealer to procure Form 'C' is to avoid local VAT at the rate of 19% of the diesel they have purchased from Karnataka against Form 'C' by claiming concessional rate at 2%.

17. The said Order, on being challenged in the present Petition, on 04.10.2017, the Division Bench at Goa, while issuing notice, was pleased to grant ad-interim relief in terms of prayer clause (c) thereby restraining the Respondents from taking any action in furtherance of the impugned Order dated 25.09.2017 and directed to process the Petitioner's subsequent application for issuance of Form 'C' as due in terms of relevant CST Act subject to outcome of the Petition.

18. Thereafter, the Petitioner made several applications praying for issuance of Form 'C' for procurement of HSD during the period 01.07.2017 to 31.12.2017 and also furnished requisite undertaking.

According to the Petitioner, the Respondent no. 3 visited the Petitioners' Codli Mines and its iron ore processing facility at Amona

Jetty and directed the Petitioner to furnish various information such as details of HSD procured, stored and consumed and the Petitioner complied with the requisite details.

The Respondent no. 3 also sought a detailed statement of the registration number of vehicle of which the machinery with the Road Transport Department as well as the value or amount of HSD consumed by each vehicle. Further, it was also informed that on verification of the details/statement of consumption of HSD furnished by the dealer, it was found that the HSD is being consumed for purposes other than mining i.e. for the purpose of its re-sale to mining trucks and transporters/private truck owners and therefore it has become difficult to classify the use of HSD as consumption for mining purpose and for re-sale. Therefore, a detailed statement was sought being duly certified, signed and stamped in order to process the applications for issuance of declaration of Form 'C' in terms of the interim order passed by the Court.

Despite this information being furnished, on 06.02.2018, the Assistant Commissioner Tax Officer disposed off the application filed by recording that M/s. Vedanta Limited is an unregistered person under the Goa VAT Act and CST Act, 1956 do not permit issuance of any declaration in Form 'C' to an unregistered person.

Another reason in the order was spelt out in the following words :

“The dealer M/s Vedanta Limited is having big iron ore plant at Amona Jetty where iron ore is brought from the other mines and processed at processing plant. The processed iron ore is stacked at jetty and thereafter loaded into the barges for transportation and sale. In this plant & plot it is noted that, there is no mines and no extraction activities of iron ore from the earth is carried out. The goods purchased on declaration from-C at concessional rate of tax @2% should be utilised in mining. It was found that the dealer is engaging transportation services from private truck owners and transporters who transport mineral ore from several places in Goa to processing plant at Amona jetty. For this transportation service the dealer M/s Vedanta Limited is making payment on the basis of rate fixed per kilometre per ton of the ore transported from one place to another. This is a service procured by the dealer M/s Vedanta Limited from the open market and while making the payment M/s Vedanta Limited is deducting the amount towards the sale value of High Speed Diesel (H.S.D) supplied to the transporter on monthly credit basis. Thus the dealer M/s Vedanta Limited is re-selling the H.S.D purchased through inter-state against Declaration Form-C to the private truck owners and instead of taking price in cash, it is adjusted by deducting in the monthly transportation bill.”

The conclusion derived in the impugned order is, that the Petitioner’s case is a case of resale of HSD purchased through intra-state against declaration Form ‘C’ falsely claiming as used in mining and the dealer M/s. Vedanta is also not paying any VAT to the resale of HSD to private truck owners.

On verifying the records, the Order however found only a part of diesel being used by the dealer M/s. Vedanta Limited for trucks owned

by the Company and for the machinery used in the mining and, therefore, a claim was allowed by granting declaration Form 'C' for HSD purchased to inter-state which is used at the mining at Codli Mines for different quarters but, on the other hand, the HSD not used in mining but resold to private persons was not allowed.

19. On 04.05.2018, while issuing 'Rule', the Court permitted an appeal to be filed since an appellate forum was available and the Appellate Authority was directed to take into consideration the challenge which was sought to be introduced by way of amendment.

It is this appeal which is decided by the Appellate Authority i.e. Additional Commissioner of Commercial Taxes on 28.06.2018 when the order under challenge was upheld by upholding the order of the Assessing Officer. The decision of the Apex Court in case of **Chowgule & Co. Pvt. Ltd. vs. Union of India** (supra) on which heavy reliance was placed to submit that the transportation of ore from mines to the dressing plant to river side to the the harbour activity of mining and the same cannot be seen as an inter dependant activity was distinguished and by elucidating reasoned order, the appeal was dismissed by holding that the applicant is an unregistered dealer under The Goa VAT Act, 2005 and CST Act, 1956 and there is no provision under the GST Act to issue declaration Forms to an unregistered person and therefore no question arose to issue any declaration to the applicant irrespective of

the order that HSD purchased in intra-state is used in mining or for resale.

20. It is in the backdrop of the aforesaid facts, we have two Petitions before us, one filed by M/s. Vedanta Limited (Writ Petition No. 876/2017) and another filed by Sesa Goa Mining Corporation Limited (Writ Petition No. 856 of 2018), challenging the Order dated 29.01.2018 passed by the Assistant Commissioner Commercial Tax Officer, adopting a same reasoning with reference to the four trade circulars issued by the Commissioner of Commercial Taxes, State of Goa being Trade Circular Nos. 1, 2, 3 and 4 published on 21.09.2017, 21.11.2017, 30.11.2017 and 11.01.2018.

21. Mr. Gopal Mudra, the Counsel for the Petitioner has urged that in the Petition filed by Vedanta on 04.10.2017, this Court had granted ad-interim relief permitting him to obtain Form 'C' pending final disposal of the matter subject to furnishing an appropriate undertaking to the revenue authorities of supplier to the Petitioner's selling dealers and the compliance has been ensured. According to Mr. Mudra, as directed by this Court, the Respondent no. 3 passed an order on 06.02.2018 partly allowing issuance of Form 'C' but, he would make a specific statement that no Form 'C' has been issued to the Petitioner till date. Apart from this, there was also partial rejection of Form 'C' premised on the ground that the Petitioner is supplying HSD to the

transporters for transporting iron ore from mines to the processing plant and such supply would amount to resale of purchase of HSD and cannot be considered as it is used in mining operation.

On this aspect, the Counsel placed reliance on the decisions of **Chowgule Pvt. Ltd vs. Union of India** (supra), where it has been held that for purpose of Section 8 of the CST Act, the expression ‘for use in mining’, would also cover the activity of transportation of ore from mining sites to the processing plants. Reliance is also placed on the decision in the case of **CIT vs. Sesa Goa Limited**³.

The learned Counsel would submit that upon an appeal being preferred against the order passed by the first authority against partial rejection, the authority exceeded the scope of the appeal by passing an order holding that the Petitioner is not entitled to Form ‘C’ under the GST regime as because it ceases to be a dealer under the CST Act and its registration under the Act has become infructuous by conveniently ignoring that the primary issue is yet to be decided by the Court and the Petition was admitted with a direction to the Appellate Authority to decide the issue and the issue was pending before the Court.

His grievance is that despite an existing order in the pending Petition, the Respondent, Reliance Industry Limited has invoked the bank guarantee on account of non-submission of Form ‘C’ and recovered a sum of Rs.8,08,67,206 from the Petitioner.

³ 2004 266 ITR 126 Bom

22. As regards the first issue about procurement of specified goods against Form 'C' post implementation of GST Act, the learned Counsel would place reliance upon series of decisions including the decision from this Court, where it has been held that the dealers who are registered under CST Act would continue to be registered under the GST Act for the purpose of purchase of goods in absence of any stipulation for automatic cancellation of their CST registration and the benefit of the procurement of goods at the concessional rates under Section 8 would continue to apply. The decision of this Court in case of **VVF (India) Ltd., vs. State of Maharashtra & 2 Ors.**⁴ is pressed into service. Similarly, the decision of the Supreme Court affirming the decision taking a similar view by Gujarat High Court in **J. K. Cement Ltd., vs. State of Gujarat**⁵ is also placed before us. It is, therefore, urged before us that in the wake of the consistent views from various High Courts upheld by the Supreme Court, the Petitioner has a right to purchase HSD at concessional rate against Form 'C' even after introduction of GST Act.

23. The learned Advocate General representing the State, however, would submit that the order has partly allowed the claim but in the peculiar facts in Vedanta Ltd. (Writ Petition no. 876 of 2016), he would submit that the registration certificate described the goods as 'HSD' and petrol which are used for running and maintenance of machinery

⁴ WP No. 932 of 2018 decided on 11.07.2024

⁵ 2020 (3) TMI 140

for mining and processing of iron ore for sale and, therefore, in the backdrop of the mechanism adopted of engaging private trucks for transportation of the ore and permitting the claim towards fuel to be deducted from the amount to be paid, it cannot avail the benefit of Form 'C' as the Company was reselling the fuel and it has not used the mining activity. According to him, if the registration of the goods is for this purpose and to this extent, he would submit that the Respondent-Company cannot take benefit of Form 'C'. In any case by relying upon the affidavit filed by the Additional Commissioner of Commercial Taxes, he would submit that the judgment of the Apex Court in **Chowgule & Co. Pvt. Ltd. vs. Union of India** (supra), is not applicable to the case of the Petitioner, which is now an unregistered person and there is no provision under the CST Act to issue declaration to an unregistered person.

Heavy reliance is placed upon the trade circular of 4/2017 which has clarified the position on the issue of requirement of registration under section 7 of the CST Act, 1956 and that Section has not been amounted consequent upon implementation of GST w.e.f. 01.07.2017. It is therefore urged that in order to obtain any type of declaration Forms and avail the benefits of the statute, the Petitioner must be registered dealer under the CST Act and this is permissible only if the person is liable to pay tax under the CST Act but after 01.07.2017, the Petitioner has no liability to pay tax under the CST Act and therefore he

cannot be continued as a registered dealer and not eligible for obtaining declaration of Form-1 as he is an unregistered dealer and Form 'C' cannot be issued to an unregistered dealer.

24. We have considered the statutory scheme existing prior to the new regime being brought into force by introduction of Article 246A of the Constitution. The prevailing regime in form of the CST Act, 1956, required registration by every dealer liable to pay tax on inter-state sales on all sales effected by him in the course of inter-state trade or commerce.

The Act describe a sale or purchase to be in the course of inter-state trade or commerce if the sale or purchase, (a) the occasions of the movements of good from one State to another, or (b) is effected by a transfer of document of title to the goods during their movement from one State to another.

A dealer by virtue of Section 6 of CST Act, 1956, is liable to pay tax under the Act on sale of any goods effected by him in the course of inter-state trade of commerce notwithstanding that no tax would have been payable under the sales tax law of the appropriate State if the sale had taken place inside that State.

The terms 'goods' under CST Act, 1956, included all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.

25. Section 8 of CST Act set out the rates of tax on sales in the course of inter-state trade or commerce and if 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 or used by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power, the provisions of sub-section (i) shall not apply unless the dealer selling the goods furnished to the prescribed authority, a declaration duly filled and signed by the registered dealer to whom the goods are particularly sold in a prescribed form obtained from the prescribed authority. The goods of the description referred to in sub-section (3) of Section 8, were therefore liable to pay tax of 2% of the turnover or 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.

26. Section 9 pertain to the levy and collection of tax and the tax payable by a dealer under the Act of Sales of Goods affected by him in the course of inter-state trade or commerce was allowed to be collected by the Government in the State from which the movement of goods commenced with a proviso prescribing that in case of sale of goods during their movement from one State to another being

subsequent to the first sale in respect of the same goods, the tax shall be levied and collected, where said subsequent sale has been effected by a registered Dealer, in the State, from which the registered dealer obtained or could have obtained the Form prescribed in connection to the purchase of such goods and where such subsequent sale has been effected by an unregistered dealer in the State from which the sale has been effected.

27. Section 9A contemplate that no person who is not a registered Dealer shall collect in any respect of any sale by him of goods in the course of inter-state trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with the Act and the Rules made thereunder.

28. The Petitioner Vedanta was a dealer registered under the Central Sales Tax Act and also under the Goa VAT Act, 2005, and as far as the CST registration is concerned, the registration in Writ Petition no. 876 of 2017 i.e. Vedanta Private Limited, as amended w.e.f. 21.08.1994, was for the following items for use in the manufacture and processing of goods for sale :

“H.S.D. (high speed diesel) & petrol which are used for running and maintenance of machinery for mining and processing of iron

ore for sale, furniture and fittings used in the manufacture for sale of barges and other vessels.”

As far as Sesa Goa Mining is concerned, the Certificate of Registration, placed on record which was renewed included various items along with 'fuel' and in the wake of the amendment in the certificate, to the list of goods intended for use in mining and for using generation of electricity in the course of inter-state, some goods were added.

29. In the Petitions before us, two issues are involved, the first being whether in the wake of coming into force of the Goa Goods and Service Tax Act, 2017, the registration of the Petitioner as a dealer under the Goa VAT Act, 2005 and under CST Act, 1956, have become invalid w.e.f. 01.07.2017 and the second issue on facts being whether the registration certificate of the Petitioners as a dealer under Section 7(2) of the CST Act, 1956 entitled the Petitioner to avail the benefit under Section 8 of the CST Act, 1956.

30. As far as the first issue is concerned, we find the same to be under consideration before various High Courts including the Bombay High Court in the past and a consistent view being formed, that despite coming into effect of the CGST Act, 2017, the registration obtained under the CST Act continued to be governed by the Act in respect of the

six items included in the definition of 'goods' under the CST Act w.e.f. 01.07.2017.

In the wake of the introduction of Article 246A in the Constitution, in form of a special provision with respect to Goods and Services Tax, conferring exclusive power to make laws with respect to Goods and Services for supply of goods or services or both, which take place in the intra-state trade of commerce in the Parliament and thereby amending entry 84 in union list of the 7th Schedule and also amending entry 54 of the State List, with term 'goods' defined in Section 2(d) of the CST Act, 1956 being substituted to include six commodities which include High Speed Diesel (HSD).

The term 'Dealer' defined in Section 2(b) means a person who carries on the business of buying, selling, supplying or distributing goods directly or indirectly for cash or for differed payment or for commission, remuneration or what valuable considerations, which now reads, 'goods' as amended in Section 2(b). Section 8 of the CST Act, which prescribe the rate of tax on sales in the course of inter-state trade or commerce, read thus :

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

(1) ..

(2) ...

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

(a) ...

(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 telecommunications network or in mining or in the generation or distribution of electricity or any other form of power;

However, even this clause stood amended by the Finance Act, 2021, which came into effect from the 1st day of April, 2021 and the substituted clause reads thus :

“(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 for sale of goods specified under clause (d) of section 2;”

What is relevant to note is Rule 13 of the Central Sales Tax (Registration & Turnover) Rules, 1957, which deserve to be read along with clause (b) of sub-section (3) of Section 8 and provides thus :

“Rule 13: Prescription of goods for certain purposes :

The goods referred to in clause (b) of sub-section (3) of Section 8, which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing

materials, machinery plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation of distribution of electricity or any other form of power."

31. In Carpo Power Ltd vs. State of Haryana & Ors.⁶, subsequent to the introduction of the GST Act, 2017, the Petitioner challenged the respondents' refusal to issue 'C' Forms in respect of natural gas purchased by it in the course of inter-state trade and commerce and used by it for the generation of electricity. The Petitioner therefore sought mandamus directing the respondents to issue Form 'C' under the CST 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.

The petitioner before the GST Act 2017, came in force was registered under the Haryana Value Added Tax Act, 2003 and the CST Act, 1956 and the registration under the CST Act continued till date in respect of natural gas for use in generation or distribution of electricity or any other form of power.

⁶ CWP No. 29437 of 2017 decided on 28.03.2018 (High Court of Punjab & Haryana)

The issue that fell for consideration was precisely set out in part 4 of the decision being “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.”

The issue came to be answered in favour of the Petitioner by examining the provisions of CST Act 1956, Central Sales Tax (Registration and Turnover) Rules, 1957, The CGST Rules, 2017, Haryana Goods and Service Tax Act, 2017 and declaration of Form ‘C’. Recording that the petitioner was registered dealer under Section 2(f) of the CST Act and even after the amendment of Section 2(d), which included natural gas, the petitioner continued to be registered, it is also recorded that the definition of goods under CST Act was amended w.e.f. 01.07.2017 to cover only six items and natural gas being one of them. It was also noticed that though 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, till date the Government has not issued a Notification under either CGST Act or HGST Act and, therefore inter-State sales of natural gas continued to be governed by CST Act. Taking note of the fact 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. The Court observed thus :

“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 telecommunications 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.”

It is worth to note that the aforesaid decision has been upheld by the Apex Court as the Special Leave Petition filed challenging the same is dismissed on 13.08.2018.

32. One more decision on a similar issue involving high speed diesel (HSD) delivered by the High Court of Rajasthan in a bunch of Petitions in the case of **Hindustan Zinc Limited vs. The State of Rajasthan & Ors.**⁷, raising a challenge to the action of the respondents in not issuing ‘C’ Form of various quarters to year 2017-2018 and therefore sought direction for issuance of ‘C’ Form to the Petitioner.

The facts before the Court reveal that the petitioner-company engaged in the business of mining of Zinc and other allied metals and is registered under the CST Act was granted registration for various classes of goods including high speed diesel. For the purpose of

⁷ S.B.Civil Writ Petition No. 5506/2018 decided on 18.05.2018

running heavy equipments for open cast and underground mines besides generating electricity for running of the plant and machinery at the mines and its smelters, the petitioner-company required HSD and it procured the same from Oil Companies either within the State or from other States.

In the wake of sub-section (1) and (3) of Section 8 of the CST Act, the petitioner-company was entitled to procure HSD at a concessional rate of 2% sales tax through inter-state trade for the purpose of mining and for this purpose, it was required to tender 'C' Form to the Vendor.

33. In the wake of Taxation Laws (Amendment) Act, 2017, an implementation to GST regime in India, an amendment was brought to the provisions of the CST Act whereby Clause (d) of Section 2 of the CST Act providing for definition of 'goods' was substituted to cover six products.

The Court recorded that in light of the said amendment, various State Governments sought clarification whether the definition of 'goods' as it appears in phrase 'manufacture or processing of goods' in Section 8(3)(b) of the CST Act, would be as per the definition provided under Section 2(d) of the CST Act of that word 'goods' when it appears in the phrase 'manufacture or processing of goods' means any goods. Referring to a clarification by the Department of Revenue, Ministry of

Finance, Sales Tax Division, Government of India, the Bench recorded thus :

“Now the Department of Revenue, Ministry of Finance, Sales Tax Division, Government of India has issued the clarification vide Office Memorandum dated 07.11.2017 on the definition of goods in sub-section (3)(b) of Section 8 of the CST Act. As per the said clarification "Department of Legal Affairs, Ministry of Law has confirmed that the term "goods" has been specifically defined under the Central Sales Tax Act, 1956 and prima facie the term "Goods" referred to in section 8(3)(b) of the Central Sales Tax Act, 1956 will have same meaning as defined and amended under Section 2(d) of the Central Sales Tax Act, 1956 vide Tax Laws Amendment Act, 2017. However, it does not affect the provisions of section 8(3)(b) of CST Act relating to telecommunication network or mining or generation or distribution of electricity or any other form of power." Hence, as per the said clarification on the definition of "goods", the term "goods" as defined under the CST Act and prima facie the term "goods" referred to in section 8(3)(b) of the CST Act will have the same meaning as defined and amended under Section 2(d) of the CST Act vide Taxation Laws (Amendment) Act, 2017. However, a specific exclusion was carved out stating that the said amendment does not affect the provisions of Section 8(3)(b) of the CST Act relating to (a) telecommunication, (b) mining, (c) generation and distribution of electricity or any other form of power.”

34. By relying upon the decision in the case of **Carpo Power Ltd vs. State of Haryana & Ors.** (supra), the following conclusion was derived :

“In the present case too, the Parliament has retained high speed diesel along with petroleum crude, motor spirit, natural gas,

aviation turbine fuel and alcoholic liquor for human consumption crude which have been specifically mentioned in Section 9 of the GST Act while defining the 'goods'. Besides, the registration under Section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of Section 4 of the CST Act. Hence, this Court finds that it is obligatory duty of the respondents to issue 'C' form to the petitioner - company and any failure on the part of the respondents to do so is without any authority of law. Thus, this Court finds nothing to distinguish the case of the petitioners herein from that of the petitioner in the case of Carpo Power Limited (supra)”

35. In VVF (India) Ltd. vs. State of Maharashtra (supra), decided on 11.07.2024, where the Petitioner involved in manufacture and sale of oleo-chemicals and personal care products which involve inter-state purchase of natural gas from Hazira, Gujarat, which is either utilized for the generation of electricity or as an input in the manufacture/processing of oleo-chemicals. It was noticed that the Petitioner possessed registration certificates under the Maharashtra Value Added Tax Act, 2002 (MVAT) and the CST Act, 1956. The petitioner pleaded that in terms of Section 8(1) of the CST Act, which provided for a concessional rate of 2% for goods described in Section 8(3) and 8(4) which provided that for applicability of Section 8(1), the purchaser shall provide a declaration to the prescribed authority duly filled and signed by the dealer to whom the goods are sold.

The Petitioner claimed that prior to 01.07.2017, i.e. prior to the implementation of GST regime, the definition of ‘goods’ in terms of

Section 2(d) of the CST Act, included all materials, articles, commodities and all other kinds of movable property except those excluded. Thus, the petitioner was duly providing Form 'C' to its vendors but when the term 'goods' was substituted by Taxation Laws (Amendment) Act, 2017, the trade Circular was issued on 24.08.2017 by which the existing MVAT and CST registrations of all dealers who were not involved in sale of any of the six items enumerated in Section 2(d) of CST Act and were deemed to be cancelled on 30.06.2017. The petitioner made a grievance that its registration under the MVAT and CST stood cancelled and it was not able to login on the Maharashtra web portal to view the details of its MVAT and CST registration. Thereafter another circular was issued on 17.11.2012 reiterating the view in the earlier circular. However, since during the pendency of the petitions, the Circulars were withdrawn and the said prayers are not pressed by the petitioners, the prayer in form of ordering and directing the respondents to issue 'C' Forms for the petitioners for the inter-state purchase which is purchased by the petitioner in manufacturing commodities, no longer defined as 'goods' w.e.f. 01.07.2017 in Section 2(d) of the CST Act, 1956, was prayed for.

Reliance is placed upon the decision in the case of **Carpo Power Ltd vs. State of Haryana & Ors.** (supra) and also the decision in case of **Tata Steel Ltd. vs. The State of Jharkhand & Ors.**⁸ and

⁸ 2019 SCC OnLine Jar 1255

since these decisions were affirmed, in case of **Commissioner of Commercial Taxes and Ors. vs. The Ramco Cements Ltd.**⁹ and the Apex Court noted that considering the consistent view of nine High Courts including dismissal of Special Leave Petition by different Benches of the Court and by specifying about exposition of the matters in issue, no interference is warranted. The learned Counsel, therefore, fairly conceded that the position stands covered and the petitioner was held entitled for the issuance of 'C' Form in respect of natural gas purchased by the petitioner from the oil company in Gujarat and used in their manufacturing activities as also in generation of electricity at captive power plant.

36. One more decision to which we make reference is the decision of the Jharkhand High Court in case of **Tata Steel vs. State of Jharkhand** (supra) in relation to HSD used in manufacturing, mining or power generation.

The petitioners before the Court were engaged in manufacturing process, some of them in mining activities and some of them in power generation. They being bulk purchasers of high speed diesel which they required for their manufacturing process/mining activities/generation of power, which is used in manufacturing, mining or generation of goods which were prescribed to be end products available for sale

⁹ SLP(C) No. 15785-15788 of 2020

stating that their end products do not come within the definition of 'goods' as defined under Section 2(d) of the Central Sales Tax Act, but high speed diesel which they required in their manufacturing process, comes within the definition of 'goods', the petitioners were aggrieved by the impugned circular issued by the State of Jharkhand denying the issuance of Form 'C' for all items indicated in definition of 'goods' given under Section 2(d) of CST Act including the high speed diesel.

The circular was issued on the basis that in coming into force of the GST regime in the State w.e.f. 01.07.2017, all six items which have been excluded in Jharkhand Goods and Services Tax, 2017 and therefore the liability to pay tax under the State GST Act was deferred till the notification was issued under Section 9(2) of the said Act and they continued to be governed by the Jharkhand Value Added Tax (JVAT). The circular provided that since the dealers dealing with goods except the six items, were no longer liable to pay tax under JVAT, their registration had come to an end automatically and the dealers are therefore not entitled to inter-state purchase of the aforesaid goods under concessional rates.

Once again, by relying upon **Carpo Power Ltd vs. State of Haryana & Ors.** (supra) and **Hindustan Zinc Limited vs. The State of Rajasthan** (supra), several authoritative pronouncements while pronouncing of the validity of the notification issued by the State Government, the Court observed thus :

“25. Having heard the learned counsels for both sides and upon going through the record, we find that only question that has to be decided in these batch of cases is whether the reasoning given by the State Government in its notification dated October 11, 2017, for denying the issuance of form C to the dealers with respect to all the items included in the definition of "goods" given in section 2(d) of the CST Act, that the dealers who are not selling their end-products which are among the aforesaid six goods, i.e., petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, are no more liable to tax under the JVAT Act and accordingly, their registration under section 7(2) of the CST Act as well, have come to an automatic end, or have become invalid, can be said to be a valid reasoning and be sustained in the eyes of law. We are of the considered view that in view of the law laid down by the honourable apex court in Printers (Mysore) Ltd.'s case [1994] 93 STC 95 (SC) ; (1994) 2 SCC 434, wherein it is clearly held that the use of the expression "goods" referred to in the first half of section 8(3)(b), i.e., on first three occasions can be understood in the sense it is defined in section 2(d) of the CST Act, whereas the expression "goods" in the second half of the clause, i.e., on the fourth occasion does not and cannot be understood in the sense it is defined in section 2(d) of the CST Act, as it refers to the manufactured goods, in the case of the writ petitioners, their end-products need not be "goods" within the meaning of section 2(d) of the CST Act. We find no merit in the submission of the learned counsel for the State that this meaning has been assigned to the word "goods" appearing in the second half of section 8(3)(b) of the CST Act, by the apex court in view of the peculiar facts of that case, as in that case, the benefit of section was given to the printers publishing the "newspapers" who were not liable to any tax on the sale of "newspapers" published by them or that they were enjoying the freedom of press under article

19(1)(a) of the Constitution of India. The only difference in the definition of pre and post amendment of "goods" as given under section 2(d) of the CST Act is that earlier the definition was having a wider connotation, encompassing into it almost all types of goods, except five goods mentioned therein, i.e., newspapers, actionable claims, stocks, shares and securities, whereas after the amendment the restricted meaning has been given to the word "goods" which shall include the six items only, which are presently there in the Act. The reasonings given by the honourable Supreme Court in paragraph 18 of the said judgment, quoted above, have nothing to do either with non-liability of the press to make any payment of tax, or the freedom of press under article 19(2) of the Constitution of India. The reasons given in paragraph 18 of the said judgment by the honourable apex court fully apply to the facts of the present case also, which conclusively hold that the word "goods" appearing in the second half of section 8(3)(b) of the CST Act may not necessarily mean the "goods" as defined under section 2(d) of the CST Act. We also find that the registration of a dealer under section 7(2) of the CST Act is not subject to any liability of the dealer to pay the tax or not, rather as laid down by the honourable apex court in Commissioner of Sales Tax, M. P. v. Madhya Bharat Papers Ltd. [2000] 117 STC 547 (SC) ; (2000) 2 SCC 15, the dealers are entitled to continue to be registered under section 7(2) of the Act, irrespective of the fact whether they are liable to pay any tax to State or not."

37. In the wake of the aforesaid authoritative pronouncement, we find substance in the arguments advanced on behalf of the Petitioners that merely because of the ushering in of the new regime by enactment the CGST Act and since the Petitioner is migrated to GST by operation of the law, the GVAT and CST registration have become invalid from

01.07.2017 and to that extent, we do not agree with the finding recorded in the impugned orders.

38. Coming to the second issue whether the Petitioners in the two Petitions are entitled for Form 'C', we must segregate the Petition on facts. As far as Vedanta Limited is concerned, it is engaged in mining of iron ore for sale and it holds certificate of registration under Goa Vat Act and CST Act and its certificate issued under the CST Act, included HSD amongst other goods as goods used for mining of iron ore for sale and in respect of the HSD purchased outside State of Goa, the Petitioner obtained Form 'C' from the relevant authority and provided the same for supplying HSD so as to procure HSD on concessional rate of CST 2%.

In this regard, we have examined the certificate of registration of the Petitioner Vedanta Limited who was earlier carrying its business in the name of Sesa Sterlite Limited and before that was registered as a dealer as Sesa Goa Limited. The Central Sales Tax (Registration & Turnover) Rules, 1957, the certificate of registration issued to Sesa Goa Limited, which was registered under a dealer under Section 7 of the CST Act, 1956. Its business being mining and exporting of iron ore, the certificate permitted the class(es) of goods specified for the purposes of sub-sections (1) and (3) of section 8 of the Act for resale and for use in mining Machinery, spares, explosives, fuses, detonators, tyres and tubes,

paints batteries & other mining equipments and also for use in the generation or distribution of electricity or any other form of power.

This certificate, issued on 11.07.1963, was valid from 06.07.1963 until cancelled. However, in accordance with sub-section (1) of Rule 7 of the Central Sales Tax (Registration & Turnover) Rules, 1957, various items were included in the registration certificate for use also in the manufacturing processing for goods for sale and one of this item is HSD but it is interesting to note the entry which stood included in the registration certificate w.e.f. 21.08.1994, read thus :

“HSD (high speed diesel) & petrol which are used for running and maintenance of machinery for mining and processing of iron ore for sale, furniture and fittings used in the manufacture for sale of barges and other vessels”

The above entry has thus included HSD but it restricted the registration to the HSD and petrol, which are used for running and maintenance of machinery for mining and processing of iron ore for sale. The amendment therefore restricted the availability of the benefit of Section 8 of the CST Act in respect of the course of the inter-state trade to the dealer at a concessional rate only for the HSD and petrol which is used for running and maintenance of machineries for mining and processing iron ore for sale and also for fittings used for manufacturing of sales and barges and other vessels.

39. The learned Counsel for the Petitioner has placed heavy reliance upon the decision in the case of **Chowgule & Co. Pvt. Ltd. & anr. vs. Union of India & Ors.** (supra), where the term ‘manufacture’ and ‘processing’ as used in Rule 13, came up for consideration and it was held that the test for determining whether manufacture can be said to have taken place and the terms received wider interpretation.

The Assessee, a private limited Company, carrying on business of mining and iron ore and selling it in the export market after dressing, washing, screening and blending and carried out an extraction of ore from the mines at Sirigao and Pale is carried on by mechanised process while the extraction of ore from the other mines is done by manual labour. When the ore is extracted from the mines it is carried to the dressing plant where it is washed, screened and dressed and then it is stacked at the mining site from where it is carried by conveyor belts to the river side for being carried by barges to the Mormugao harbour.

The Assessee sold the ore only in the export market, it had to supply ore to the foreign buyers and therefore it was required to carry out blending of the ore mined by it in such a manner as to produce ore of the required chemical and physical composition. This operation of blending is carried out by the Assessee, notwithstanding the loading of the ore into the ship, but in the process of loading itself through the

mechanical ore handling plant thus performs a dual function, namely, blending of ore from different stock piles containing ore of different chemical and physical composition and loading of the blended ore into the ship for delivery to the foreign buyers.

The different stages of the entire activity of the Assessee were divided into seven different operations being, namely, (i) extraction of ore from the mine; (ii) conveying the ore to the dressing plant; (iii) washing, screening and dressing the ore; (iv) conveying of the ore from the mine site to the riverside; (v) transport of the ore from the riverside to the harbour by means of barges; (vi) stacking of the ore at the harbour in different stockpiles according to its physical and chemical composition; and (vii) blending of the ore from different stockpiles with a view to producing ore of the required specifications and loading it into the ship by means of the mechanised ore handling plant.

The question that arose for consideration was whether goods purchased by the assessee for use in the above operations could be said to be goods purchased for use "in the manufacture or processing of goods for sale or in mining" so as to attract the lower rate of sales tax under Section 8(1)(b) of the Central Sales Tax Act, 1956. Referring to clause (b) of sub section (3) of Section 8 with specific reference of the words used by him in 'manufacturing' or 'processing' of goods for sale

or in mining, or in the generation of distribution of electricity or any other form of power.

40. When the Assessee made an application to the Sales Tax Officer for inclusion of 36 items in terms of goods in the certificate of registration on the ground that they were being purchased by it for use in iron ore and purchasing it for sale in the export market. The Assessee made an application in the export market and hence they were falling within Section 8(3)(b) and Rule 13. The Sales Tax Officer held that only 11 items of goods could be regarded as goods purchased for use in mining and the remaining 25 items of goods did not fall within this description and hence were not included in the Certificate of Registration.

This matter was carried up to the level of Judicial Commissioner and ultimately arose for consideration before the Apex Court. In this regard, the specific question formulated for consideration was whether the items of goods purchased by the Assessee for use in carrying the mining ore from the mining site to the river side and from the river side to the Mormugao harbour fell within the description of goods intended for use in processing of ore for sale.

41. Highlighting the Section 8(3)(b) and Rule 13, the goods must be purchased for use "in mining" and not used "in the business of

mining", it was held that only the items of goods purchased by the assessee for use in the actual mining operation which are eligible for inclusion in the certificate of registration under this head and these would not include those goods which are purchased by the assessee for use in the operations subsequent to the stacking of the ore at the mining site. In this regard, the following observations of the Apex Court in case of **Indian Copper Corporation Limited vs. Commissioner of Commercial Taxes, Bihar & Ors.**¹⁰ was relied upon and the relevant observations reads thus :

“... The decision of this Court in Indian Copper Corporation case (supra) is directly in point and completely supports this conclusion which we are inclined to reach on principle. The assessee in that case was a company which mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale. There were several questions which arose for consideration, before the Court in regard to the assessee's claim for inclusion of certain items of goods in its certificate of registration and one of them was whether the locomotives and motor vehicles used for removing ore from the place where the mining operations were concluded to the factory where the manufacturing process was going on, could be said to be goods intended for use in the manufacture or processing of goods for sale within the meaning of Section 8(3)(b) and Rule 13. This Court held that they were goods falling within this description so as to be entitled to inclusion in the Certificate of Registration of the assessee and Shah, J. speaking on behalf of the Court gave the following reasons for taking this view :

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We are also of the opinion that in a case where a dealer is engaged both in mining operations and in the manufacturing process-the two processes being inter-dependent-it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts. It appears that the process of mining ore and manufacture with the aid of ore copper goods is an integrated process and there would be no ground for exclusion from the vehicles those which are used for removing goods to the factory after the mining operations are concluded. Nor is there any ground for excluding locomotives and motor-vehicles used in carrying finished products from the factory. The expression "goods intended for use in the manufacturing or processing of goods for sale" may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage. If this be the correct view, the restrictions imposed by the High Court in respect of the vehicles and also the spare parts, tyres and tubes would not be justifiable."

Holding that the machinery, vehicles, barges and other items of goods purchased by the assessee for use in carrying the mined ore from the mining site to the river side and from the river side to the Mormugao harbour fell within the description of goods intended for use in processing of ore for sale within the meaning of Section 8(3)(b) and Rule 13. It further held that if any of these items of goods are purchased by the assessee as being intended for use as "machinery, plant, equipment, tools, spare-parts, stores, accessories, fuel or lubricants" in carrying the mined ore from the mining site to the river side and from the river side to the Mormugao harbour, they would qualify for inclusion in the Certificate of Registration.

42. The aforesaid pronouncement is heavily relied upon by the Counsel for the Petitioner. Following the decision in case of **Chowgule Pvt. Ltd vs. Union of India** (supra), the learned Counsel would submit that in **CIT vs. Sesa Goa Limited** (supra), the Division Bench of this Court adopted a similar view when the issue arose whether the ITAT was justified in holding that the assessee is entitled for deduction on investment allowance under Section 32-A of the Income Tax Act, in respect of machinery used in the mining activity, ignoring the fact that the assessee is engaged in extraction and processing of iron ore, not amounting to manufacture or production of any article or thing. Referring to the various steps in the mining operations identified by the Apex Court in **Chowgule & Co. (P) Ltd. vs. Union of India** (supra), it was held that the ore has to be extracted or raised from earth in which it is embedded and it has to be brought to the surface and what is brought to the surface is something new which comes into existence as an article or thing and therefore winning or extraction of ore would fall within an expression 'production' and the assessment would be entitled to the benefit of Section 32A of the Act.

43. A decision of Allahabad High Court in case of **Triveni Engineering & Industries Ltd. vs. Commissioner, Trade Tax**¹¹, is also pressed by Mr. Mundra when the question that fell for

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consideration was about the use of diesel purchased by assessee against Form 'C' for cane procurement. Holding that for manufacturing of sugar, the crushing of sugar is for that purpose and sugarcane has been transported from its place of storage or where it has been purchased to the point of crushing pit where it has to be off-loaded for crushing and since it is integrally connected part of processing and manufacturing of sugar cane and therefore the diesel purchased against the Form 'C' if used for cane procurement, it was held to be not amounting to violation of Section 10(d) attracting penalty under Section 10-A of the Central Sales Tax Act, 1956. Reliance is once again placed upon the decision in the case of **Chowgule & Co. (P) Ltd. vs. Union of India** (supra), in arriving at the aforesaid conclusion by recording that when sugarcane is transported from storage point to the head for crushing purpose, such transportation is a part of manufacturing process and there is no reason why transportation of sugarcane from purchase centres to factory premises should be excluded from the term 'manufacture of sugar'.

44. In the light of the aforesaid, when we have considered the facts placed before us, we must notice the distinguishing factor as we find that a dealer is entitled to avail the benefit only as regards the goods which are specified in the certificate of registration as the certificate of registration issued under Rule 5(1) certifying an entity to be registered as a dealer under Section 7(1) 7(2) of the CST Act, 1956 is qua the

class(es) of goods specified for the purposes of sub-sections (1) and (3) of Section 8 of the said Act and it is in respect of the sales of these goods in the course of inter-State trade to the dealer which is taxable at the rate specified in that sub-section subject to the provisions of sub-section (4) of the said section, which may be, (a) for resale, (b) for use in the manufacture or processing of goods for sale, (c) for use in mining, (d) for use in the generation or distribution of electricity or any other form of power, and (e) for use in the packing of goods for sale/resale.

45. As far as Vedanta Limited is concerned, the certificate of registration includes HSD and petrol but the registration is for HSD and petrol which are used for running and maintenance of machinery for mining and processing of iron ore for sale, furniture and fittings used in the manufacture for sale of barges and other vessels.

The subject of registration are the goods and as per Section 8(3) (b), it is only those goods of the class or classes should be specified in the certificates of registration of Dealer, qua the goods, which are being intended for resale by him or for use by him in the manufacture or processing of goods for sale or telecommunication network or in mining, or in the generation or distribution of electricity or any other form of power and those are entitled to avail the benefit of clause (b) of sub-rule (3) of Section 8 of the CST Act, 1956, and no other goods or for no other purpose. The certificate in favour of the Petitioner Vedanta

Limited, restricts HSD and petrol only to be used for the purpose specified therein, and when these goods are subject matter of re-sale or used in manufacturing or processing of goods for sale or used in mining or for use in packing of goods for sale/resale for distribution of electricity, the dealer is entitled for the concessional rate and not otherwise. This being not the case, we are of the view that the Petitioner is not entitled for issuance of Form 'C' as regards HSD as claimed by it.

46. Yet another aspect of the matter being the HSD is found consumed for purposes other than mining i.e. for purpose of re-sale to mining trucks transporters/private owners and therefore in any case, it is not used for mining purpose.

The order dated 06.02.2018, a reasoned order has recorded that the dealer M/s. Vedanta is reselling HSD purchased through inter-State against declaration of Form 'C' to private truck owners and instead of taking amount in cash, is adjusting the amount in deducting monthly transportation bills. It is not in dispute that the goods purchased i.e. HSD at concessional rate is utilized for being used by private truck owners to transporters to transport to mining from several plants in Goa to processing plant at Amona Jetty.

The authority has observed that it is a case of re-sale of HSD falsely claiming as being used in mining. Worth it to note that the impugned order has permitted a part of diesel to be used by the dealer

M/s. Vedanta Limited for trucks owned by the Company and for the machinery used for mining and, therefore, have permitted the claim of use of diesel in mining activity only at Codli mines and allowed the declaration Form 'C'.

47. In our considered opinion, none of the parties have paid attention to the goods for which the registration is granted, namely, HSD and petrol, which is used for running and maintenance of machinery for mining and processing iron ore for sale i.e. restricting its use to the machineries and had it been a case that the registration was specifically obtained for the vehicles, the certificate could have said so but, it only restricts the HSD and petrol used for running and maintenance of the machinery and it is not possible to segregate the two terms running and maintenance as they are used qua 'machinery for mining and for processing of iron ore for sale' indicating that the petrol or diesel which is utilized for operation of the machinery for mining and processing of iron ore for sale, would be entitled for the benefit of concessional rate and not otherwise.

It is for this reason, since we do not find that the Petitioner in Writ Petition no. 876 of 2017 is entitled for the benefit of Form 'C' as regards HSD with its specific restricted use being permitted in the certificate of registration, on factual aspects, we refuse to issue direction for issuance of Form 'C' as regards the HSD included in its registration certificate w.e.f. 21.08.1994. We agree with the

submissions of the learned Advocate General and refuse the relief to the Petitioner.

48. As far as Writ Petition in Sesa Goa Limited is concerned, we find the certificate for registration is for 'goods' 'fuel', which include HSD but since we find that the application of the company is refused only on the ground that in the new regime, the Company is not entitled for issuance to Form 'C' and since we have already answered the above issue as first part of our judgment, we quash and set aside the Order dated 29.01.2018 and direct the authority to consider the case of the Petitioner for issuance of declaration without this obstacle standing in its way but on considering on merits, we expect the order to be passed within a period of eight weeks from the date of receipt of Order.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.