

# **Commercial Taxes Officer Vs. A. Infrastructure Ltd.**

Civil Appeal No. 2806 of 2015 · Supreme Court of India · 2015-11-24 · Dipak Misra · Prafulla C. Pant · F2J-C-1383

## **Full judgment text**

Commercial Taxes Officer Vs. A. Infrastructure Ltd.

[Civil Appeal No. 2806 of 2015]

[Civil Appeal No. 2807 of 2015]

[Civil Appeal No. 2808 of 2015]

[Civil Appeal No. 2809 of 2015]

[Civil Appeal No. 2810 of 2015]

Dipak Misra, J.

1. This batch of appeals, by special leave, calls in question the legal acceptability of the common order dated 19th December, 2013 passed by the learned Single Judge of the High Court of Judicature for Rajasthan, at Jodhpur in a batch of revision petitions filed by the assessee-respondent assailing the judgment dated 23.11.2011 passed by the Rajasthan Tax Board, Ajmer (for short 'the Board') in Appeal No. 680 of 2009 and other connected appeals whereby it had affirmed the decision rendered in appeals by the Deputy Commissioner (Appeals) who had upheld the assessment orders passed by the Commercial Taxes Officer in respect of various quarters of the years 2006-2007, 2007-2008 and 2008-2009 disallowing the claim of Input Tax Credit (ITC) and charging interest under Sections 18, 22 and 55(4) of the Rajasthan Value Added Tax Act, 2003 (for brevity "the 2003Act").

2. The facts giving rise to this batch of appeals are that the assessee- company is engaged in the business of manufacturing Asbestos Cement Pressure Pipe and Asbestos Cement Sheets and it had availed ITC on the purchase of raw material used in the manufacture of A.C. Sheets. The assessing authority issued notice to the assessee for the purpose of disallowing ITC on purchase of raw material used in manufacturing A.C. Sheets for the period mentioned hereinabove and pursuant to the show cause notice the assessee filed a detailed reply and eventually the assessing authority passed orders under Section 22 of the Act disallowing the ITC and charged interest.

The said orders were assailed before the Appellate Authority which declined to interfere with the orders appealed against, compelling the assessee to file second appeals before the Board which placed reliance on ACTO v. M/s. Suncity Trade Agency[1] and dismissed the appeals. The Board while dismissing the appeals opined that the assessee- Company, a manufacturing unit, had not been charged on the sales of its product, as per the notification which squarely fall under the definition of exempted goods and hence, the final product was exempted, but it was not entitled to avail ITC as the notification clearly postulated that the units/institution was not exempted from the tax but the sales of its goods were exempted from tax as per the definition of "Exempted Goods".

3. The grievance of dismissal constrained the assessee to file the revision petitions before the High Court, and seeking interference in the revision petition it was contended that the scheme of Section 8 of the Act which deals with exemption of tax and the notification issued under the Rajasthan Sales Tax Act, 1994 (for short, 'the 1994 Act') and the various notifications issued under the said Act from time to time deal with A.C. Sheets and in view of the postulates laid down in the notification dated 09.03.2007, issued under sub-section (3A) of Section 8 wherein the manufacturer of asbestos cement sheets and bricks have been exempted and, therefore, it could not be said that A.C. Sheets manufactured by the assessee were exempted goods which is the pre-requisite for denying ITC under Section 18 of the Act.

Reliance was placed on the judgment of ACTO v. Abishek Granites Ltd.[2] to buttress the proposition that exemption to unit is different from the exemption to the transaction of sale of the commodity. It was also highlighted before the High Court that when two views are possible, the view in favour of the assessee should be accepted and for the said purpose reliance was placed on CIT v. Kulu Valley Transport Co. (P) Ltd[3]. The background of the issue of notification dated 09.03.2007 and the

communication issued by the Commissioner, Commercial Taxes, Rajasthan, Jodhpur were stressed upon to bolster the plea that assessee was exempted from tax and not the A.C. Sheets manufactured by it.

4. The stand of the assessee was controverted by the revenue contending, inter alia, that vide notification S.O. 372, manufacturers of A. C. Sheets and Bricks were included at S. No. 20 in Schedule-II, which entitles the units to claim exemption on the sale of manufactured goods on the fulfillment of certain conditions and in view of the specific conditions stipulated in Section 18(1)(A) of the Act, ITC was not allowed. Reliance was placed on notification S.O. 377, dated 09.03.2007 issued under Section 8(3) of the Act to harp that A.C. Sheets clearly fall within the category of exempted goods. Reference was made to the definition of 'exempted goods' and 'goods' contained in Section 2(13) & (15) of the Act. It was further submitted that irrespective of whether the notification was issued under sub-Section (1) or (3) or (3A) or (4), the goods would fall within the definition of exempted goods and consequently the assessee would not be entitled to ITC. For the said purpose, reliance was placed on M/s. Sun City Trade Agency (supra).

5. The High Court referred to the dictionary clause as enumerated in Section 2(13) which deals with "exempted goods", Section 2(15) that defines the terms "goods", Section 8 which provides for "exemption of tax" and Section 18 which deals with "Input Tax Credit and thereafter, referred to the notification dated 16.03.2005 under the 1994 Act and the notifications dated 01.06.2006, 05.07.2006, 09.03.2007 and the amendment notification issued on the same day by the Finance Department (Tax Division).

The learned Single Judge analysed the provisions of the Act and the notifications and took note of the fact that under the 1994 Act exemption granted related to sale of A.C. Sheets and Bricks, subject to the conditions indicated therein. The High Court further noted that the notification dated 01.06.2006 which had been issued in exercise of power under Section 8(2) and Schedule-I which was amended and A.C. Sheets and Bricks having contents of fly ash 25% more than by weight was inserted as entry 60A, and further adverted to the notification issued under the same provision, on 05.07.2006 vide which the Schedule-I was amended and entry 60A was substituted.

After so stating, the learned Single Judge referred to the notifications issued on 09.03.2007 that deals with A.C. Sheets and also noted the fact that vide S.O. 371 issued under Section 8(2) of the Act, the existing entry 60A was deleted from Schedule-I and further by S.O. 377 issued under Section 8(3A) of the Act which pertained to "manufacturers of asbestos cement sheets and bricks" were added in Schedule-II and it provides the conditions for availing exemption for sale of A.C. Sheets and Bricks manufactured in the state.

6. On the aforesaid basis, the Court proceeded to further observe that by notification dated 16.03.2005 under the 1994 Act and the notifications dated 16.02.2006 and 05.07.2006 read with notification dated 09.03.2007 A.C. Sheets and Bricks were exempted. The goods, that is, A.C. Sheets and Bricks were taken out by S.O. 371 and the manufacturers of A.C. Sheets and Bricks were exempted by inclusion in Schedule-II by S.O. 372 and conditions for availing such exemption by the manufacturers were indicated by S.O. 377.

On the basis of the aforesaid analysis, the revisional Court opined that it is significant that while S.O. 371 had been issued under Section 8(2) of the Act, S.O. 372 and 377 had been issued under Section 8(3A) and (3) respectively, which provisions, as noticed hereinbefore, dealt with Schedule-I under Section 8(2) and Schedule-II under Sections 8(3) and (3A), which in turn related to exemption of goods and exemption of persons respectively, therefore, it was apparent from the notifications issued on 09.03.2007 that the intention of the State was to exempt the manufacturers of A.C. Sheets and Bricks subject to fulfillment of conditions as indicated in S.O. 377 and to take away exemption available to A.C. Sheets and Bricks as goods, as was available before the said date on account of its inclusion in Schedule-I.

7. As the impugned order would show, the High Court distinguished the judgment rendered in Sun City Trade Agency (supra), on the ground that the said decision dealt with a situation wherein the exemption notification pertaining to stainless steel flats, ingots and billets were exempted from tax on the conditions indicated in the notification and it had been held therein that merely because the exemption is conditional or given subject to fulfillment of certain conditions it does not mean that such goods would fall outside the definition of exempted goods.

8. The learned Single Judge referred to the definition contained in Section 2(13) of the Act which deals with exempted goods and not with exemption of person or class as indicated in Section 8(3) of the Act, and observed that the intention of the legislature in incorporating Section 18(1)(e) of the Act takes away the exempted goods from the purview of the ITC and not the person or class of persons exempted under Section 8(3) and the intention of the legislature was not to include exempted goods in the category of exempted persons as mentioned in Section 18(1)(e) of the Act, and hence, it was demonstrable that the goods and dealers are treated separately and the same was also evident from the provision of Section 5 of the Act.

9. As is evident, the High Court further proceeded to opine that the goods included in Schedule-II were entitled for ITC inasmuch as the said conditions indicated for exemption related to Self-Help Groups and those who had been registered with the Khadi and Village Industries Commission or Rajasthan Khadi and Village Industries Board by the notifications S.O. 376 and S.O. 378 issued on 09.03.2007 wherein a specific stipulation had been made to the extent that no input tax credit shall be claimed by such dealers in respect of purchase of raw materials used for manufacture of aforesaid goods.

Thereafter, the High Court proceeded to observe:- "If the persons included in Schedule-II were not entitled to claim ITC, there was no reason to include the said conditions for the above noted persons. Apparently, it is the sale of goods made by person or persons included in Schedule-II, which is exempt and not the goods manufactured by them, whereas, for denying ITC, the requirement is that of 'exempted goods'."

10. Being of this view the learned Single Judge held that:- "In view of express language of Section 18(1)(e) of the Act, notifications S.O. 371 and S.O. 372 read with S.O. 377, the petitioner who is a manufacturer of A.C. Sheets is entitled to avail ITC and the authorities below were not justified in denying Input Tax Credit to the petitioner based on interpretation put by them on inclusion of the petitioner in Schedule-II under Section 8(3A) and notification S.O. 377 dated 09.03.2007 issued under Section 8(3) of the Act."

11. The expression of the said view and the ultimate setting aside of the orders of the Court below, as stated earlier, is the subject matter of assail in these appeals.

12. We have heard Mr. Shovan Mishra and Mr. Milind Kumar, learned counsel for the appellant and Mr. Paras Kuhad, learned senior counsel for the respondent.

13. To appreciate the controversy at hand, it is necessary to scrutinize the various provisions of the Act and the notifications that have been issued from time to time. Section 2(13) and 2(15) define "exempted goods" and "goods" respectively, and they are extracted below:- "Section 2(13) "Exempted goods" means any goods exempted from tax in accordance with the provisions of this Act; xxx xxx xxx Section 2(15) "goods" means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be served before sale or under the contract of sale."

14. Section 8 deals with exemption of tax and Section 18 lays down the method, the manner and the conditions prescribed for availing the input tax credit. Section 8 and the relevant portion of Section 18 are reproduced below:-

"Section 8 - Exemption of tax -

(1) The goods specified in the Schedule-I shall be exempt from tax, subject to such conditions as may be specified therein.

(2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-I, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

(3) The State Government in the public interest, by notification in the Official Gazette, may exempt whether prospectively or retrospectively from tax the sale or purchase by any person or class of persons as mentioned in Schedule-II, without any condition or with such condition as may be specified in the notification.

(3A) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-II, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.

(4) The State Government may, if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this Act in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the notification.

(5) Every notification issued under this section shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for a period of not less than 30 days, which may be comprised in one session or in two successive sessions and if before the expiry of the sessions and if before the expiry of the sessions in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such notification or resolves that any such notification should not be issued, such notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done there under."

#### Section 18 - Input Tax Credit:-

(1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of Section 3 or Section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of :-

(a) sale within the State of Rajasthan or;

(b) sale in the course of Inter-State trade and commerce; or

(c) sale in the course of export outside the territory of India; or

(d) being used as packing material of goods, other than exempted goods, for sale; or

(e) being used as raw material except those as may be notified by the State Government in the manufacture of goods other than exempted goods, for sale within the State or in the course of Inter-State trade or commerce; or

(f) .....

(g) ....."

15. As has been stated earlier, the High Court has referred to various notifications. The notification dated 16th March, 2005 was issued under Section 15 of the Rajasthan Sales Tax Act, 1994. It is as under:-

"Notification dated 16.03.2005 under the Act of 1994:-

S. No. 1874; F.4(78)FD/Tax/2004-168 dated 16.03.2005

In exercise of the powers conferred by section 15 of the Rajasthan Sales Tax Act 1994 (Rajasthan Act No. 22 of 1995) and in supersession of this Department's Notification No. F.4/(68)FD/Tax-Div/99-271 (S.No. 1147), dated, January 24, 2000 (as amended from time to time), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from tax the sale of asbestos cement sheets and bricks, manufactured in the State by an industrial unit having fly ash as its main raw material on the following conditions, namely:-

that such fly ash shall constitute twenty five percent or more in the contents by weight of such asbestos cement sheets and bricks; and

that such unit commences commercial production by 31.12.2006.

This notification shall remain in force upto 23.1.2010."

16. The said notification as mentioned therein was to remain in force upto 23.1.2010. When the said notification was in vogue another notification dated 1.6.2006 was issued under Section 8 of the 2003 Act.

The said notification is as under:-

"Notification Jaipur,

Dated : 01.06.2006

In exercise of the powers conferred by sub-section (2) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following further amendments is SCHEDULE-I appended to the said Act; namely :-

#### AMENDMENTS

After the existing S.No. 60 and before S.No. 61, the following new S. No. and entries thereto shall be inserted, namely :- "

17. On 05.07.2006 another notification was issued in exercise of the powers conferred by sub-section (2) of Section 8 of the 2003 Act. On 09.03.2007, S.O. 371 was issued by the Finance Department (Tax Division) vide which S. No. 68A from Schedule-I appended to the Act (2) deleted. May it be noted that S. No. 60A was substituted by notification dated 05.07.2006 which has been referred to hereinbefore.

18. The notification dated 09.03.2007, S.O. 372 was issued by the Finance Department (Tax Division) and the said department also issued another notification on the same day which is relevant. Both the notifications are reproduced below:-

"Notification dated 09.03.2007 S.O. 372:-

#### FINANCE DEPARTMENT

(TAX DIVISION)

#### NOTIFICATION

Jaipur, March 9, 2007

S.O. 372 - In exercise of the powers conferred by sub-section (3A) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments is Schedule-II appended to the said Act, namely :-

#### AMENDMENTS

In Schedule-II appended to the said Act:-

(1) .....

(2) After the existing S.No.18 and entries thereto the following new

S.Nos. and entries thereto shall be added; namely:-

19

Self Help Group

20

Manufacturers of asbestos cement sheets and bricks

Notification dated 09.03.2007, S.O. 377

"FINANCE DEPARTMENT (TAX DIVISION)

#### NOTIFICATION

Jaipur, March 9, 2007

S.O. 377 - In exercise of the powers conferred by sub-section (3) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from payment of tax, the sale of asbestos cement sheets and bricks manufacturers in the State having contents of fly ash twenty five per cent or more by weight, on the following conditions, namely :-

(1) that the goods shall be entered in the registration certificate of the selling dealer;

(2) that the exemption shall be for such goods manufactured by the dealer who commenced commercial production in the State by 31.12.2006; and

(3) that the exemption shall be available up to 23.01.2010."

19. As we find the High Court in the impugned order has referred to the provisions of the Act and the notifications. On a careful scrutiny of the order passed by the High Court, it is perceivable that it has proceeded on the foundation that there is a distinction between the exempted units and exempted sales, and finally manufactured sales area, or to put it differently, the final transactions of goods or a sale when it takes place. Thus, the distinction as laid down by the learned Single Judge is based on exemption of unit and exemption on transaction or sale.

20. On an analysis of the scheme of the Act, it is manifest that there is difference between exempted goods, i.e., goods on which no Value Added Tax is payable and are, therefore, not taxable and other cases where a particular transaction when it satisfies specific condition is not taxable. In this regard reference to the authority in State of Tamil Nadu v. M.K. Kandaswami & others[4], would be seemly, for this Court had adverted to three distinct concepts; taxable persons, taxable goods and taxable events and how they were distinguished.

It was observed in the said case that if the said distinction is overlooked, it may lead to serious error in construction and application of a taxing provision or enactment. In the case of taxable or non-taxable/exempted goods, the focal point and the focus is on the character and class of goods in relation to their exigibility. Referring to the provisions of Section 7-A of the Madras General Sales Tax, 1959, the expression in the Act "taxable goods", it was opined as regards the goods mentioned in the First Schedule of the Act that the sale and purchase was liable to tax at the rate and at the point specified therein.

It was further held that the goods which were exempt were not taxable goods and, therefore, could not be brought to charge and taxed. However, notwithstanding the goods being taxable goods, there could be circumstances in a given case by reason of which a particular sale or purchase would not attract sales tax.

21. Be it noted, in the said decision, Section 7-A of the Madras General Sales Tax Act, 1959, which reads as under, fell for consideration:-

"(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under Sections 3, 4 or 5, as the case may be, and either-

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State; or

(c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Sections 3, 4 or 5 as the case may be whatever be the quantum of such turnover in a year:

Provided that a dealer (other than a casual trader or agent of a non- resident dealer) purchasing goods the sale of which is liable to tax under sub-section (1) of Section 3 shall not be liable to pay tax under this sub- section, if his total turnover for a year is less than twenty-five thousand rupees." Section 7-A, it was observed, provided for such situations where the goods were taxable goods in the hands of the purchasing dealer, if any of the conditions (a), (b) and (c) of sub-section (1) of Section 7-A was satisfied.

In the facts of the case, it was noticed that the goods in question were chargeable to tax as they were taxable goods under Schedule I, but exemption had been granted. Reversing the decision of the High Court, reference was made to an earlier decision of the Supreme Court in Ganesh Prasad Dixit Vs. Commissioner of Sales Tax[5] and a decision of Kerala High Court in Malabar Fruit Products Co. Vs. Sales Tax Officer, Palai[6] (1972) 30 STC 537 (Ker).

22. With reference to the decision in Ganesh Prasad Dixit (supra) and the language in Madhya Pradesh General Tax Act, 1959, it was observed:

"29. The impugned Section 7-A is based on Section 7 of the Madhya Pradesh Act. Although the language of these two provisions is not completely identical, yet their substance and object are the same. Instead of the longish phrase, "the goods, the sale or purchase of which is liable to tax under this Act" employed in Section 7-A of the Madras Act, Section 7 of the Madhya Pradesh Act conveys the very connotation by using the convenient, terse expression, "taxable goods". The ratio decidendi of Ganesh Prasad (supra) is therefore, an apposite guide for construing Section 7-A. Unfortunately, that decision, it seems, was not brought to the notice of the learned Judges of the High Court."

23. With reference to Kerala General Sales Tax, 1963, this Court noted the following reasoning given by the Single Judge of the Kerala High Court :-

"32. Holding that Section 5-A, was valid and intra vires the State Legislature, the learned Judge explained the scheme of the section, thus:-

Though normally a sale by a registered dealer or by a dealer attracts tax, there may be circumstances under which the seller may not be liable as, for example, when his turnover is below the specified minimum. In such cases the "goods" are liable to be taxed, but the sales takes place in circumstances in which no tax is payable at the point in which tax is levied under the Act. If the goods are not available in the State for subsequent taxation by reason of one or other of the circumstances mentioned in clauses (a), (b) and (c) of Section 5A(1) of the Act then the purchaser is sought to be made liable under Section 5A.

\* \* \*

Another instance I can conceive of is a case of a dealer selling agricultural or horticultural produce grown by him or grown in any land in which he has interested, whether as owner, usufructuary mortgagee, tenant or otherwise. From the definition of "turnover" in Section 2 (xxvii) of the Act it is evident that the proceeds of such sale would be excluded from the turnover of a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise, though merely by such sales he satisfies the definition of 'dealer' in the Act. Thus, such a person selling such produce is treated as a dealer within the meaning of the Act and the sales are of goods which are taxable under the Act but when he sells these goods, it is not part of his turnover. Therefore, it is a case of a dealer selling goods liable to tax under the Act in circumstances in which no tax is payable under the Act. In such a case, the purchaser is sought to be taxed under Section 5A provided the conditions are satisfied. The case of growers selling goods to persons to whom Section 5A thus applies is covered by this example."

24. In CST v. Pine Chemicals Limited[7], this Court posed the following question:-

"7. The simple question before us is whether the Bench which decided Pine Chemicals is right in holding that the benefit of the said sub-section is available even where the goods are exempted with reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question is whether an exemption of the nature granted under Government Order No. 159 dated 26-03-1971 is an exemption available "only in specified circumstances or under specified conditions" within the meaning of the Explanation to Section 8(2-A), as contended by the State or is it a case where the goods are exempt from the tax 'generally' within the meaning of Section 8(2-A), as contended by the respondents/dealers? We are of the opinion that the respondents/dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub-section."

25. Thus, the Court drew a distinction between goods, generally exempt from tax after noticing that Section 8(2A) of the Central Sales Tax Act specifically uses the expression "exempt from tax generally or subject to tax generally at a rate which is lower than 4%", and accordingly observed that when the goods are exempt under certain specified circumstances alone, the exemption is not a general, but a conditional one. In such circumstances, it cannot be said that the goods are exempt from tax generally for the exemption may vary from unit to unit and would depend upon date of commencement of production of each unit. Reference was made to earlier decision in Indian Aluminium Cables Limited v. State of Haryana[8], wherein it has been held that exemption from tax when conferred by conditions or in certain circumstances, there was no exemption from tax generally.

26. At this juncture, we are required to understand the effect of the principles spelt out in above decisions especially in K.N. Kandaswami and Others (supra) on the facts of the present case. There is no doubt that a distinction has to be drawn between exempted goods, which means complete

exemption for the specified goods, and when the goods are taxable goods, but a transaction or a person is granted exemption. When the goods are exempt, there would be no taxable transactions or exemption to a taxable person. In other cases, goods might be taxable, but exemption could be given in respect of a taxable event, i.e., exemption to specified transactions from liability of tax or exemption to a taxable person, though the goods are taxable. Such exemptions operate in circumscribed boundaries and not as expansive as in the case of taxable goods.

Exemptions with reference to taxable events or taxable persons would not exempt the goods as such, for a subsequent transaction or when the goods are sold or purchased by a non-specified person, the subsequent transaction or the taxable person would be liable to pay tax. It is, in this context, it has been highlighted by the respondent and, in our opinion, absolutely correctly that Section 4 of the Act provides for levy of tax in a situation where the goods, which were not exempted but could otherwise not be subjected to tax on account of exemption granted to a person or to a transaction. The goods remain taxable goods through exemption stands granted to a particular individual or a specified transaction.

That being so, all subsequent transactions in those goods, which are not specifically exempt and not undertaken by an exempted person could be subjected to taxation. Therefore, the appellant though exempted from payment of tax, subsequent transactions of sale of asbestos cement sheets would be taxable. The transaction of sale by the manufacturer/dealer covered by the exemption notifications issued under Section 8(3) of the Act would be protected or an exempted transaction, but the goods not being exempted goods would be taxable and could be taxed on the happening of a taxable or charging event. It is simply because the goods are not exempt from tax or exempted goods, but are taxable. As a logical corollary it follows that the Value Added Tax would have to be paid on the taxable goods in a subsequent transaction by the purchasing dealer.

27. As a sequitur, we are obliged to observe that if the contention of the appellant is to be accepted, the respondent though covered by exemption notification under Section 8(3) of the Act could be at a disadvantage because finally when the subsequent sale is made by a non-exempted dealer or tax stands paid on the non-exempted transfer, the goods, i.e., asbestos cement sheet, would suffer the tax on the entire sale consideration. This would place an exempted manufacturer-dealer at a disadvantageous position and make his products uncompetitive inspite of the exemption notifications under Section 8(3) of the Act.

28. In the context of the issue in question, the respondents have rightly highlighted that where the appellant wanted to restrict the benefit of ITC when a particular dealer or transaction was exempted, it was so stipulated in the exemption notification issued under Sections 8(3) and 8(4) of the Act. Such notifications admittedly do exist and were issued by the appellant. They are also right in drawing support from the note sheets relating to Finance Bill 2007 as also the communications issued by Commissioner of Commercial Taxes.

The note sheets and the communication of the Commissioner draw a clear distinction between exemptions when the goods were not taxable as they do fall under the First Schedule and when an exemption was granted under the Second Schedule, which relates to specified transaction of sale or exempted dealers even when the goods were taxable goods. In latter cases, subsequent dealers undertaking sale of goods would be liable to pay tax on sale of such products. There can be no shadow of doubt that subsequent dealers undertaking sale of goods manufactured and sold by the respondent company would be liable to pay tax on such products.

29. In view of the aforesaid premised reasons, we do not find any merit in these appeals and accordingly they stand dismissed.

There shall be no order as to costs.

.....J. [Dipak Misra]

.....J. [Prafulla C. Pant]

New Delhi

November 24, 2015

[1] (2006) 147 STC 405

[2] 23 Tax-world 285

[3] (1970) 2 SCC 192

[4] (1975) 4 SCC 745

[5] (1969) 1 SCC 492

[6] (1972) 30 STC 537 (Ker)

[7] (1995) 1 SCC 58

[8] (1976) 4 SCC 27

"60A.

Asbestos cement sheets and bricks having contents of fly ash 25% or more by weight.

Subject to the condition of entry in Registration Certificate of the selling dealer."

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