

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**STR No. 03/2022
STR No. 04/2022
STR No. 05/2022
STR No. 06/2022
STR No. 07/2022
STR No. 08/2022**

Reserved on 11.04.2023
Pronounced on 28. 04.2023.

M/S Power Grid Corporation of India Ltd.

..... applicant (s)

Through :- Mr.Subash C Dutta Advocate
Mr. Sachin Sharma Advocate

V/s

Assessing Authority Sales Tax Circle D
Jammu

.....Respondent(s)

Through :- Mr.K.D.S.Kotwal Dy.AG

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Sanjeev Kumar, 'J'

1 In terms of these references made by the Jammu and Kashmir Sales Tax (Appellate) Tribunal, Jammu ['the Tribunal'] under Section 12-D of the Jammu and Kashmir General Sales Tax Act, 1962 ['the GST Act'], following questions have been referred to this Court for determination:

- (i) Whether, on the facts and circumstances of the case, the applicant has supplied the 'goods' defined under Section 2(h) (iii) [should have been sub-clause (ii)] and 2(h) (iv) of the GST Act which shall be deemed to be a sale before 15.05.1997 under Section 2 (L) and is a dealer under the Act amenable to tax ?
- (ii) Whether the Tribunal was bound by its earlier orders in the cases of applicant itself as they have attained finality and,

on the principle of 'consistency', the Tribunal should not hold otherwise than what has been settled by its earlier Benches?

2 As would be seen from the reading of references, the aforesaid questions have arisen for determination of this Court in the background and context of following facts:

M/S Power Grid Corporation of India Ltd. ['the assessee'] is a Government of India undertaking engaged, *inter alia*, in establishing its own grid stations and laying wires for transmission of electricity. It is in the execution of its aforesaid works, the assessee purchased some goods, material and machinery etc. from outside the State. The assessee has taken registration under the Central Sales Tax, 1956 ['the CST Act']. The *modus operandi* adopted by the assessee for construction of its grid stations and laying wires etc. for transmission of electricity indicates that it first buys goods, material and requisite machinery from outside the State and thereafter hands over the same to the contractors for consumption, fixation and laying out in the works of the assessee. As is claimed, the ownership and possession of the property used in execution of the works of the assessee remains with it and the contractors are only engaged to execute the work on payment of labour charges. It is the specific case of the assessee that since no property in goods is transferred to the contractors, as such, no payment against such material handed over to the contractors, to be used in the execution of works of the assessee, is charged. It is, thus, claimed that since the assessee was not making any local sales under the GST Act, as such, was not initially registered under the Act. However, in compliance to the notice, the assessee appeared before the Assessing Authority and on the advice of the later, it filed the returns with **nil** turnover. The Assessing Authority, however, did not accept the contentions of the assessee and held that as the assessee had taken registration under the CST Act to import goods from outside the State against C-Forms, was therefore, a 'dealer'. It was the plea taken by the Assessing Authority that only a dealer, who is registered as such under CST Act can use C-Forms to purchase goods for personal use. It was, thus, concluded by the Assessing Authority that the transactions made by the assessee were liable to tax. Consequently, the Assessing Authority also imposed interest and penalty under the GST Act.

Against the orders passed by the Assessing Authority for the accounting years 1996-97, 1997-98, 1998-1999, 1999-2000, 2000-01 & 2001-02 demanding tax, interest and penalty from the assessee, PGCi filed statutory appeals before the Appellate Authority. The appeals filed by the assessee in respect of all the accounting years except the accounting year 1998-99 were disposed of with the assessee getting partial relief of reduction of 20% of taxable turnover.

Feeling aggrieved and dissatisfied with the orders passed by the Appellate Authority, the assessee filed six different appeals before the Tribunal. The impugned orders passed by the Assessing Authority were assailed primarily on the ground that the observations made by the Appellate Authority that the goods imported by the assessee from outside the State on the strength of C-Forms were supplied to the contractors for execution of work contracts and there was, thus, transfer of property in goods to the contractors was erroneous and legally unsustainable. It was contended by the assessee that the goods owned by it were only handed over to the contractors for use and fixation and, therefore, their possession and ownership always remained with the assessee. It was, thus, argued that there was no transfer of property in goods and that no project was completed by the contractors during the year when the material/goods were supplied. It was the contention of the assessee that since the goods and material were used in self works or the works of the Corporation, as such, there was no question of executing any works contract by the Contractors. It was urged that there could be no sale of any goods or material to itself.

The Tribunal considered these appeals and the grounds of challenge urged on behalf of the assessee *in extenso* and, after analyzing the rival contentions, came to the opinion that, in view of the admitted facts that the assessee had purchased goods from outside the State against C-Forms and handed over the same to the contractors for using them in the works contract, it was a foregone conclusion that the goods had been utilized by the assessee through its contractors in works contract. The pivotal question which had arisen for consideration before the Tribunal was, whether the material purchased by the assessee and handed over to the contractors for using the same in the works contract for the projects of the assessee was taxable under GST Act ?.

Referring to the definitions of “Dealer”, “Goods” and “Sale”, contained in Section 2 of the GST Act till 15.05.1997, it was concluded by the Tribunal that the Assessee was a dealer supplying goods defined under Section 2(h)(ii) and 2(h)(iv) of the GST Act upto 15.05.1997 and after 15.05.1997, the works contract, whether divisible or indivisible, involving transfer of property or not, would be deemed to be a sale by the assessee in terms of Section 2(g)(i-b). It was further opined by the Tribunal that before 15.05.1997, the term ‘sale’ under Section 2(L) included goods involved in the execution of the contract. Post 15.05.1997, the position is much clear i.e “transfer of right to use goods etc. was also held to be a sale” as defined in Section 2(L) (v). The Tribunal, however, set aside the orders of the Assessing Authority to the extent and insofar as these pertain to imposition of penalty and levy of interest. The appeals were, thus, partly allowed.

3 The assessee was still not satisfied and, therefore, moved an application before the Tribunal under Section 12-D of the GST Act and sought reference of as many as eight questions of law.

4 Reference application was opposed by the respondents on the ground that no substantial question of law requiring reference to the High Court was involved in the matter. The Tribunal considered the reference application made in respect of all the six accounting years and by a common order dated 06.09.2022, framed and referred two questions of law which we have reproduced hereinabove.

5 Having heard learned counsel for the parties and perused the material on record, it is necessary to first notice few material facts which are not disputed. The assessee, which is a Public Sector Undertaking, is engaged in transmission of electricity from one place to another and for that purpose, is erecting, establishing and maintaining its sub-stations, grid stations and transmission lines. For laying out the construction and maintenance of transmission lines, sub-stations and grid stations etc. the assessee, during the

period in question, imported materials/goods from outside the State. The said material was purchased by the assessee against the C-Forms. The registration certificate of the assessee granted under the CST Act clearly refers to the nature of business as “works contract”. Under column (A) of the said certificate of registration, the assessee is registered for import of tower material, conductors, sub-station material, steel, cement etc. for use in laying transmission lines and construction of sub-stations and other allied works. It has also come on record and which fact is neither denied by the assessee, nor any contrary material has been placed on record by the revenue that, on execution of the works involving use of aforesaid material, all the works, assets, along with material used therein would ensure to the benefit of State/utilities or organizations for valuable consideration viz. transmission charges. It is thus evident that the works contracts executed by the assessee through sub-contractors are meant for and transferred to other utilities or organizations. It is, thus, the case of the respondents that the goods involved in the execution of the works contract get transferred to State/utilities or organizations for which these works are executed by the assessee. The entire transaction of the assessee which has been made amenable to GST Act, in the words of Assessing Authority, involves following steps:

- (i) purchase of material;
- (ii) handing over the material to the contractors for construction purposes;
- (iii) contractors hand over the possession of the works to the assessee after its due execution; and,
- (iv) the entire work including equipments and assets after completion get transferred to the State or other utilities/organizations.

6 It is, thus, held by the Assessing Authority that the transaction i.e transfer of equipments/assets erected and established by the assessee either itself or through sub-contractors is tantamount to execution of works contract by the assessee and, therefore, by the definitions of ‘Sale’, ‘Goods and ‘Dealer’ given in the GST Act, the transfer of goods or property in goods utilized in the execution of works contract is a sale exigible to tax under the GST Act. This finding of fact and the conclusion drawn on the basis of the definitions of ‘Sale, ‘Goods’ and ‘Dealer’ given in the GST Act has been upheld by the Appellate Authority as well as the Tribunal.

7 Once the questions of law framed by the Tribunal are appreciated in the aforesaid backdrop, it would clearly transpire that, having regard to the definitions of ‘Goods, ‘Dealer’ and ‘Sale’ given in the GST Act, the services provides in the shape of works contract, whether divisible or indivisible involving transfer of property or not, fall in the definition of the term ‘goods’ and any such transaction shall be deemed to be a sale by the person making the same. To understand the controversy in a better manner, it is necessary to set out the definitions of aforesaid terms given in the GST Act as amended from time to time.

8 At the relevant point of time, i.e in respect of the accounting year 1996-97, the definition of ‘Goods’ as amended vide the Amending Act No. X of 1984 w.e.f 01.05.1984 till 14.05.1997 was as under:

“**Goods**” means all kinds of movable property (not being auctionable claim newspapers, stocks, shares and securities) and includes-

(i) food or any articles of food or other eatables or any drink (Whether or not intoxicating) supplied or served by way of or as part of any service or in any manner whatsoever with or without

any amenity in a hotel, restaurant or any other place of eating by whatever name called;

Provided that where a composite charge is payable in respect of residential accommodation, food and drink, the sale price of food and drink included therein shall be determined in such manner as may be notified by the Government notification in the Government gazettee;

(ii) All materials, articles and commodities, whether or not to be used in construction, fitting out, improvement or repair of movable or immovable property;

(iii) Growing crops, grass, trees, plants including the produce thereof and other thing attached to, or forming part of the land which are agreed to be served before sale or under contract of sale; and,

(iv) Right to use any goods for any purpose, whether or not, for a specific period”.

9 The definition of ‘sale’ as it existed during the accounting year 1996-97 after it was amended by the Act No. XX of 1981 was as under:

“**Sale**’ with all its grammatical variations and cognate expressions means any transfer of property in goods (otherwise than by mortgage, hypothecation, charge or pledge) by any person for cash with or deferred payment or for any other valuable consideration and includes a transfer of property in goods or in some other form:

(i)involved in the execution of works contract;

(ii) being eatables including food or any drink (whether or not intoxicating) way of or as part of any service or in any other manner whatsoever with or without any other amenity;

(iii) on hire purchase or any system of payment by installments notwithstanding that the seller retains the title to any goods as security for payment of price;

(iv) in the course of supplies or distribution by a society or a club or any association or any other body of persons, whether or not incorporated; and,

(v) transfer of the right to use any goods, for any purpose (whether or not for a specified period), and the word ‘purchase’ shall be construed accordingly.

Explanation 1.

A transfer of property in goods for cash or deferred payment or other valuable consideration, whether on licence, permit or otherwise shall notwithstanding that such goods are controlled goods be deemed to be a sale.

Explanation 2.

(a) The sale of goods shall be deemed, for the purpose of this Act to have taken place in the State, wherever the contract of sale might have been made, if the goods are within the State:

- (i) In the case of specific or ascertained goods, at the time the contract of sale is made; and
- (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the other party is prior or subsequence to such appropriations;

(b) where there is a single contract of sale of goods situated at more places than one, the provisions of clause(a) shall apply as if there were separate contracts in respect of the goods at each of such places.

10 From a conjoint reading of the definitions of ‘Goods’ and ‘Sale’ as it was during the relevant period i.e the accounting year 1996-97, what comes to fore in the context of controversy can be put in the following words:

“(a) all materials, articles and commodities, whether or not to be used in construction, fitting out, improvement or repair of movable or immovable property and the right to use any goods for any purpose, whether or not, for a specific period were, *inter alia*, goods within the meaning of Section 2(h)(ii) and 2 h(iv) and the transfer of property in such goods (otherwise than by mortgage, hypothecation, charge or pledge) by any person for cash or deferred payment or for any other valuable consideration was a sale within the meaning of term as given in Section 2(L) of the

GST Act. Even the transfer of property in goods or in some other form for cash or deferred payment or for any other valuable consideration involved in execution of works contract had also been brought within the purview of term 'sale'.

11 In light of the above, when we examine the case of the assessee in respect of the accounting year 1996-97, we clearly find that, handing over of the goods and material to the contractors for construction and laying of power grids, sub-stations and transmission lines of the assessee did not involve the transfer of right to use goods. Not only the ownership and dominion over the goods handed over to the contractors remained vested with the assessee, but the transfer or handing over of the goods and material to the contractors was without any consideration. It can, thus, be safely concluded that the transaction between the assessee and its contractor involving transfer of goods was not supported by any valuable consideration and, therefore, cannot be construed as a transfer of right to use goods so as to bring it within the purview of term 'sale' as defined under Section 2(L) of the GST Act. So far so good, but an important question that arises here for consideration is, whether goods purchased by the assessee from outside the State against C-forms and in its capacity as a registered dealer under CST Act have been used in the execution of works contract. Indisputably, the goods and the material purchased by the assessee against C-forms from outside the State by way of inter-State sale has been used in the construction and laying of power grids, sub-stations and transmission lines of the assessee. It is, however, not clear from the record as to whether the works contract executed by the assessee through its sub-contractors is actually handed over to the State or other utilities/undertakings. From deep scrutiny, we could only find that the assessee, after erecting grid stations, sub-stations and transmission lines, provides facility of transmission of electric energy to the State and other utilities/undertakings by levying

transmission charges. Whether the works executed by the assessee through its sub-contractors involving the use of goods and material are executed for and handed over to the States, other utilities or undertakings, is not clear from the record. As a matter of fact, this aspect has not been considered either by the Assessing Authority or the two Appellate Forums under the GST Act which have heard and decided the appeals. Absent such material on record, it is difficult for us to make any comment, lest the parties or either of them may be prejudiced.

12 On the basis of material before us and having limited scope of the reference, we are of the considered view that, in respect of assessing year 1996-97, there was no transfer of right to use goods from assessee to the contractors who constructed, set up and laid power grids, sub-stations and transmission lines for the assessee by utilizing the goods and material provided to them by the assessee itself without any consideration.

13 So far as the accounting years 1997-98 to 2001-2002 are concerned, we have to approach the controversy in a slightly different manner, in that, by the Amending Act No. X of 1997, the definition of ‘goods’ as well as the definition of ‘sale’ had underwent substantial change. The definition of Goods w.e.f 15.05.1997 was as under:

“**Goods**” means all kinds of movable property (not being actionable claim, newspapers, stock, shares, securities) and includes-

[(1) food or any articles of food or other eatables or any drink (Whether or not intoxicating) supplied or served by way of or as part of any service or in any manner whatsoever, with or without any amenity (in a hotel, restaurant or any other place of eating by whatever name called);

Provided that where a composite charge is payable in respect of residential accommodation food and drink, the sale

price of food and drink included therein shall be determined in such manner as may be notified by the Government notification in the Government gazette;]

[(i-a) services in the form of lodging facilities provided by hotels, services provided by beauty saloons, private nursing homes, services provided by photographers and advertisers rendered by way of or as part of any contract or in any other manner whatsoever involving skill and labour and such transaction shall be deemed to be a sale by the persons making the same].

(i-b) services provided in the shape of works contract, whether divisible or indivisible involving the transfer of property or not and such transaction shall be deemed to be the sale by the person making the same.

(ii) all materials, articles and commodities, whether or not to be used in construction, fitting out, improvement or repair of movable or immovable property;

(iii) growing crops, grass, trees, plants including the produce thereof and other things attached to or forming part of the land which are agreed to be served before sale or under contract of sale; and

(iv) right to use any goods for any purpose, whether or not, for a specific period.

14 Similarly the definition of ‘Sale’ during the period w.e.f 15.05.1997 to 08.11.2004 was as under:

“**Sale**’ with all its grammatical variations and cognate expressions means any transfer of property in goods (otherwise than by mortgage, hypothecation, charge or pledge) by any person for cash with or deferred payment or for any other valuable consideration and includes a transfer of property in goods or in some other form:

(i) xxxxxxxx

(ii) being eatables including food or any drink (whether or not intoxicating) way of or as part of any service or in any other manner whatsoever with or without any other amenity.

(iii) on hire purchase or any system of payment by installments notwithstanding that the seller retains the title to any goods as security for payment of price.

(iv) in the course of supplies or distribution by a society or a club or any association or any other body of persons, whether or not incorporated; and

(v) transfer of the right to use any goods, for any purpose (whether or not for a specified period), and the word ‘purchase’ shall be construed accordingly.

Explanation1.

A transfer of property in goods for cash or deferred payment or other valuable consideration, whether on licence, permit or otherwise shall notwithstanding that such goods are controlled goods be deemed to be a sale.

Explanation 2.

(a)The sale of goods shall be deemed, for the purpose of this Act to have taken place in the State, wherever the contract of sale might have been made, if the goods are within the State:

- (i) In the case of specific or ascertained goods, at the time the contract of sale is made; and
- (ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the other party is prior or subsequence to such appropriations;

(b)where there is a single contract of sale of goods situated at more places than one, the provisions of clause(a) shall apply as if there were separate contracts in respect of the goods at each of such places]

15 When we examine the controversy at hand in the light of amended definitions of ‘goods’ and ‘sale’, we find that, from 15.05.1997, the services provided in the shape of works contract, whether divisible or indivisible, involving transfer of property or not, were brought within the definition of ‘goods’ and such transaction deemed to be a ‘sale’ by the person making the same. The right to use any goods for any purpose,

whether or not, for a specific period which was earlier also existing in the definition of 'goods' remained unchanged.

16 So far as the definition of 'sale' is concerned, the transfer of property in goods involved in execution of works contract came to be deleted. There was no other substantial change in the definition of 'sale' so far as our purpose is concerned.

17 By the conjoint reading of amended definitions of 'goods' and 'sale', we can safely say that w.e.f 15.05.1997, the services provided in the shape of works contract were also brought within the definition of 'goods' and the transaction involving providing of such services, a deemed sale by the person making it.

18 In the instant case, as have already noted, we are not sure, whether the works executed by the assessee through subcontractors were meant for some third person like the State, utilities/organizations. Anyway, this transaction between the assessee and the Government or organization for which the works are constructed/erected by the assessee, is not subject matter of adjudication before us. The transaction between the contractors and the assessee is, of course, in the nature of services provided by the contractors to the assessee in the shape of works contract which transaction shall be deemed to be a sale by the contractor.

19 Viewed thus, it shall be the contractor, who shall be accountable for paying the sales tax on the services provided to the assessee in the shape of works contract. Such is also not the case set up by the revenue before the Forums below or even before us. This will leave us with only the transfer of right to use goods by the assessee to the contractors. We have already rendered our opinion hereinabove and reiterate that, in the given facts and circumstances, we find no transfer of right to use the goods provided by the

assessee to the contractors for constructing, erecting or laying out the power grids, sub-stations and transmission lines for the assessee. We fully concur with the findings of fact recorded by the Tribunal.

20 From the definition of 'sale' as it existed up to 15.05.1997, it is abundantly clear that transfer of property in goods or in some other form involved in the execution of works contract was 'sale' within the meaning of Section 2(L) of the GST Act and therefore, exigible to tax. Similarly the transfer of the right to use any goods for any purpose (whether or not for a specified period) also falls within the purview of definition of 'sale' given in the GST Act. After 1997 and till 08.11.2004, clause (i) of Section 2(L) was deleted. However, the transfer of property in goods and the transfer of right to use any goods for any purpose, whether or not for a specific period, was retained as a part of definition of "Sale". However, the transfer of property in works contract came to be excluded from the definition of "Sale".

21 When we view the entire controversy raised in light of the definitions of 'Goods' and 'Sale' as were prevalent at the relevant point of time, it clearly transpires that the transfer of property in goods or some other form involved in the execution of works contract was a sale only up to 15.05.1997. The position, however, changed by deletion of clause (i) of Section 2(L) by the Act No. X of 1997 w.e.f 15.05.1997. The accounting years in question are from 1996-97 to 2001-02 and, therefore, except for the month of April and 15 days of May of the accounting year 1996-97, the transfer of property in goods involved in the execution of works contract was not a sale within the meaning of the term used in the GST Act and therefore, not exigible to sales tax under the Act. That would clearly mean that what is being taxed by the respondents is the transaction between the assessee and the contractors.

22 Indisputably, the goods in question were purchased by the assessee from outside the State against C-forms for which it had necessary registration under the CST Act. These goods which on purchase had vested in the assessee were handed over/delivered or conveyed to the contractors engaged by the assessee for erecting and establishing transmission lines, sub-stations and grid stations etc. Notwithstanding the handing over of the goods and material to the contractors, there was no transfer of property in goods from the assessee to the contractors, nor was there any consideration, either in cash or in form of some other valuable consideration. It can also be not said that by handing over the goods to the contractors for erection of aforesaid utilities for the assessee, there was, in essence, any transfer of right to use any goods for any purpose supported by some consideration. Needless to point out that transfer of the right to use any goods for any purpose whether or not for a specific period must also be for a consideration paid or deferred to qualify it to be a 'sale' within the meaning of Section 2(L). Mere transfer of right to use any goods or even transfer of goods to be used in works or not shall not be a 'sale' unless it is supported by consideration.

23 In the instant case, the ownership and dominion over the goods purchased by the assessee from outside the State always remained with the assessee and the goods were never transferred to the contractors against any valuable consideration. As a matter of fact, the goods and materials purchased by the assessee from outside the State were utilized by the contractors as per the directions of the assessee in raising the construction of various transmission lines, power grids and sub-stations etc.

24 We may agree with the assessing authority as also the Appellate Authority that these works after completion were to vest in the State or in some other utilities or organizations and, therefore, there was a transfer in property to

such utilities/organizations or State for consideration and the transaction was exigible to sales tax, but, in the instant case, we find from the definition of sale as amended vide Act No. X of 1997 w.e.f 15.05.1997, the transfer of property in goods or in some other forms involved in the execution of works contract has been deleted.

25 An argument was raised on behalf of the revenue that since the assessee is a registered dealer under the CST Act and has affected the inter-State purchases against C-forms, as such, cannot escape its liability to pay tax on the goods/material used by it in works contract. Indisputably, the assessee is a dealer engaged in inter-State sale and purchases and registered under Section 7 of the CST Act.

26 Form a reading of Section 7 of the CST Act, it becomes abundantly clear that every dealer liable to pay tax would require mandatory registration under the Act. A person, who is registered under Section 7 of the CST Act, is necessarily a dealer liable to pay tax under the Act. A dealer, in terms of Section 2(b) of the CST Act, is a person who carries on business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or commission, remuneration or any other valuable consideration. In terms of Section 8 of the CST Act, every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer goods of the description referred to in sub-section 3, which would include goods used in the generation or distribution of electricity or any other form of generation, shall be liable to pay tax under the CST Act which shall be 3%/4% of his turn over or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower. Section 8(4) clearly provides that such concessional rate of tax would be available to the dealer who furnishes to the prescribing authority in a

prescribed manner a declaration duly filled and signed by him. The C-form is a prescribed form for furnishing such declaration.

27 The argument that the assessee is not a dealer under the CST Act is, thus, not available in view of the fact that the assessee is not only a registered dealer in terms of Section 7 of the GST Act, but has also availed the benefit of concessional rate of tax in the inter-State purchases made by him of the goods and material used in construction and laying of power grids, sub-stations and transmission lines etc.

28 As already noted, had it been a case of the revenue that the assessee had utilized the goods imported from outside the State against C-forms in the works contract, entirely different consideration would have prevailed. What is sought to be taxed by the revenue is the transaction of transferring/conveying/handing over of the goods and material purchased by it to the contractors engaged for constructing and laying of utilities like power grids, sub-stations and transmission lines. We, however, find the mechanism adopted by the assessee to defeat the provisions of the GST Act and to cause loss to the public exchequer, a figment of ingenuity of the assessee. The contractor, who is entrusted the job of constructing and laying power grid stations and transmission lines is a supplier also. The assessee has cleverly split a single works contract into two i.e labour contract and supply contract, whereas the fact remains that the labour contractor and the supplier is one and the same entity. The assessee, by virtue of a supply agreement, purchases the goods and material from the contractor to be used by the same contractor in the construction and laying of power grids, sub-stations and transmission lines etc of the assessee. Ordinarily, the contractor was to raise power grids, sub-stations and transmission lines as a whole and hand them over to the assessee for consideration. The consideration was to include the price of material utilized in

these works. Had the assessee followed this usual mechanism, it would have rendered the contractor liable to pay tax under the GST Act. To avoid this liability of the contractor, the assessee, in terms of a supply contract separately executed, purchased the goods and material from the contractor from outside the State and delivered the same to the self-same contractor to be used in different works of the assessee. Mr. Subash Dutt calls it a tax planning, but we see it as a shrewd move on the part of the assessee to defeat the provisions of the GST Act.

29 We are aware that the aforesaid observations of ours may not directly impact the outcome of the references, but we are sure that if the Authorities under the GST Act lift the veil, they would certainly find that the two agreements styled as labour contract and supply contract are, in essence, a single composite contract to execute the works of the assessee by the contractor. If that exercise is done by the Authorities under the GST Act, the contractor, who has executed the works contract of the assessee, may fall in the GST net. In that eventuality, even the assessee, who is supposed to deduct the tax at source while making payments to the contractors could also be held liable. Be that as it may, with the aforesaid observations, we leave it to the Tax Authorities to act in the matter in appropriate manner.

30 Mr. Subash Dutt, learned counsel appearing for the assessee has placed before us voluminous case law to substantiate his submissions that none of the transactions entered into by the assessee is exigible to sales tax under the GST. We, however, do not find it necessary to advert to and discuss all these judgments for the reason that we are clear from the reading of definition of 'sale' and 'goods' as it existed at the relevant point of time that the transaction of handing over the material/goods by the assessee to the contractors is not a transaction of sale in any manner calling for imposition of liability of sales tax

interest or penalty. We also find force in the argument of Mr Subash Dutt that, for the sake of maintaining consistency and discipline, the Assessing Authorities as well as the statutory appellate authorities must follow the law laid down by the Tribunal which stood at the apex of hierarchy of the quasi judicial forums created under the GST Act. As is brought to our notice that on the earlier occasions also, the similar question had arisen before the Tribunal and the Tribunal after analyzing the entire legal position had held the transaction between the assessee and its contractors not a 'sale' exigible to tax under the GST Act. This order of the Tribunal should have been followed faithfully by all the Forums subordinate to it. We, however, find that the Assessing Authorities had been passing the same orders time and again ignoring the mandate of law laid down by the Tribunal. We can understand that the Assessing Authority may pass a different order than the one passed by the Tribunal on a question of law, in a case where there is change of law or variation in fact situation. In that eventuality, it is expected of Assessing Authorities/Appellate Authorities to give reasons for deviating from settled position of law. If the Assessing Authority and the statutory appellate Authorities under the GST Act are permitted to ignore the legal position determined and laid down by the Tribunal, it would create not only judicial indiscipline, but would make the law totally uncertain. The assessee, who feel bound by the law declared by the Tribunal, unless it is modified or set aside by the Higher Forum, and regulate their conduct and transactions accordingly, would be in a state of quandary and many a times may be misled. This will put them to a lot of inconvenience and unsavoury adverse consequences.

31 In view of the discussion made above, we answer the reference in the following manner:

(i) Answer to question No.1:

That the transaction between the assessee and the contractors whereunder the assessee has supplied the goods and material purchased by it from outside the State against C-Forms for the purpose of erecting/establishing transmission lines, sub-stations and power grids for itself did not amount to 'sale' as it was defined under Section 2(L) of the GST Act during the relevant period and, therefore, not exigible to sales tax under the GST Act. As a necessary corollary, the assessee may not be a dealer liable to pay tax under the GST Act in respect of aforesaid transaction.

(ii) Answer to question No.2:

That not only the Tribunal but all the Authorities subordinate to it are bound to follow and comply with the law laid down by the Tribunal. This is necessary to maintain judicial discipline and avoid uncertainty in law. The Tribunal may, in appropriate cases, take a view different from the one taken by it earlier if there is change in law or the fact situation in the context whereof the law was declared by it earlier. The Assessing Authorities or the Statutory Appellate Authorities under the GST Act cannot and should not take a view on question of law contrary to the view taken by the Tribunal. Such conduct of the Authorities shall be gross impropriety and indiscipline which may call for initiation of appropriate departmental action.

29 We, however, make it clear that change in law and facts situation in context whereof a particular law is laid down by the Tribunal may be a good reason or justification for such Authorities to take a different view, but in that eventuality also, reasons justifying deviation must be spelt out. We, accordingly, answer the references in the aforesaid terms.

Registry to send a copy of this judgment to the Tribunal who shall proceed in the matter in accordance with law.

(RAJESH SEKHRI)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
28 .04.2023
Sanjeev

whether order is reportable:Yes

