RAJASTHAN TAX BOARD, AJMER

Appeal No.796/2013, 797/2013, 798/2013/Sriganganagar

M/s The Indure Pvt.Ltd.A,
Suratgarh/New Delhi ..... Appellant

Vs

(1) The Dy. Commissioner (Appeals-II), Bikaner
(2) The Assistant Commissioner, Special Circle,
Sriganganagar ..... Respondents

Appeal No.1688/2013, 1689/2013, 1690/2013, 1691/2013/Sriganganagar

The Assisstant Commissoner,
Special Circle, Sriganganagar ..... Appellant

Vs

M/s The Indure Pvt.Ltd.,
Suratgarh/New Delhi ..... Respondents

D.B.
Shri Madan Lal, Member
Shri Ishwari Lal Verma, Member

Present:-
Shri J.N. Sharma,
Advocate for the Appellant

Shri Ram Karan Singh,
Depty Govt. Advocate for the Respondents

JUDGEMENT

Dated 23 Nov., 2015

1. These appeals have been filed under section 83 of the RVAT Act (in short "The Act") against the order as mentioned below in the table passed by the Dy. Commissioner (Appeals-II), Bikaner (in short "Appellate Authority") remanding the appeals against the orders passed by the Assistant Commissioner, Special Circle, Sriganganagar (in short "Assessing Authority") as mentioned below in the table for the assessment years as mentioned in the table under section 24,55 & 58 of the Act, and section 33 of the Act creating a disputed demand of as per chart below, against which appellant preferred these appeals.

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Table of the Tax, Penalty and Interest

Appeal No.	Assess. Year	Appeal order date	Tax	Interest	Penalty	Total
796/2013	2007-08	08-03-13	70791171	29713359	2000	100506530
797/2013	2008-09	01-03-13	104826926	16803809	2500	121633235
798/2013	2009-10	11-03-13	98698106	16104950	5000	118864125
1688/2013	2007-08	08-03-13	70791171	29713359	2000	100506530
1689/2013	2008-09	01-03-13	104826926	16803809	2500	121633235
1690/2013	2008-09	01-03-13				
1691/2013	2009-10	11-03-13	98698106	16104950	5000	118864125

2. In brevity, facts of the cases which give rise to these appeals:

(1) Appellant the Rajasthan Rajya Vidyut Utpadan Nigam Limited (in short, the RRVUNL) is a Private limited Company having its Head office at Indure House, Greater Kailash II, New Delhi and registered with CTD Rajasthan. The Appellant Company as an Engineering Company having experts in the field of designing, procurement and supply of equipments as one arm and engineers who are experts in the field of erection and commissioning and civil work on the other hand. Similarly, the RRVUNL, Jaipur also have experts for purchase, procurement and civil engineers, who look after the work of construction etc. Keeping in mind inter-alia the requirement of clear demarcation of operations and for the purposes of administrative exigency and optimum operational efficiency - two separate orders, one for designing, procurement and supply of equipments and another for erection, testing, commissioning and civil work relating to the Thermal Power Projects were respectively issued.

(2) As such RRVUNL issued two separate orders each for Suratgarh Supply Order No. RVUN/SE(TD/II)/TDM-I/STPS-BOP(S)/TNS-I/D.3381 dated 3.10.2006 amounting Rs. 186 Crores was for Design, Engineering, Procurement & Supply of Equipments including mandatory spares of BOP package on EPC basis for Suratgarh Thermal Power Station Work Order No. RVUN/SE(TD/II)/TDM-I/STPS-BOP(S)/TNS-I/D.3382 dated 3.10.2006 amounting Rs. 185 **Crores for Erection, Testing, Commissioning including civil works** of BOP **package on EPC basis and another for** Suratgarh Thermal Power Station.

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(3) The RRVUNL issued further tenders for design, engineering, procurement and supply of equipments including mandatory spares of BOP package on EPC basis for 2x250 M.W. Chhabra Thermal Power Project Stage I, Phase II as per specifications issued against TNCH-3 including all amendments and clarifications. Contract **No. RVUN / DYCE (TDM) (TDM-I) / CTPP-II / BOP /TNCH-III /D.56 dated 7.1.2009 for Rs. 451.36 crores**. Another contract bearing **No. RVUN / DYCE (TDM) (TDM-I) / CTPP-II / BOP / TNCH-III / D.57 dated 7.1.2009** for a sum of Rs. 478.56 crores for erection, testing, commissing, including civil works of BOP package on EPC basis. The contracts No.56 and 57 were executed in the year 2009-2010 and in this year only advance for the contract was received.

(4) The appellant applied for composition fee against works contracts along with necessary application and documents before the CTO, Works Contract and Leasing Tax, Sriganganagar, after examining the same granted them exemption certificate baring No. 2892/47-165 determining the exemption fee at the rate of 1.5 per cent as to contract No 3182 & No. 57.

(5) The appellant having their factories in Uttar Pradesh where some of the goods as customized were manufactured and for those goods which were not manufactured at the factories of the appellants in Uttar Pradesh the Head office of the appellants had placed orders for the manufacture of such goods as per specifications given in the tenders by the awarder. Contract No. 3381 & No. 56 deals with design, engineering, procurement and supply etc., as such the goods were transported to the site at Suratgarh either from their factories in Uttar Pradesh or from other States as mentioned above. The appellant had started executing contract No. 3382 in the year 2007-2008, and contract No.57 in 2009-10 and paid exemption fees as per exemption issued to him. The appellant while filing the returns they had not shown sales effected under the contract No.3381 & No. 56 treating it from outside the State of Rajasthan as these were in the course of inter -state trade and commerce for which C forms were issued by the awarder.

(6) Assessments for the above mentioned years were passed by the Assistant Commissioner under section 24, 55 and 58 of the RVAT Act determining exemption fee at the rate of 1.5 per cent in respect of exemption certificate. Against the assessment orders, the appellants had

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filed the said appeals before the learned Deputy Commissioner (Appeals), Commercial Taxes, Bikaner. In the meanwhile the said Assessing officer suo moto had initiated rectification proceedings under section 33 of the Act and the demand was enhanced. The appellant preferred appeal against the rectification orders also. The Appellate Authority disposed off all the appeals vide order dated 01-03-2013, 08-03-2013 and 11-03-2013 and remanded the cases for fresh orderds on certain directions.

3. Being aggrieved by the orders passed by Appellate authority; the appellant as well as revenue submitted the present appeals.

4. Shri J.N. Sharma learned counsel to the Appellant contended that the impugned orders of both the lower authorities have completely misconstrued the observations made in the order dated 7.12.2011 of the Hon'ble High Court of Rajasthan in their S.B. Civil Writ Petition No. 8491of 2011 and S.B. Civil Writ Petition No. 9185 of 2011 titling M/s The Indure Pvt. Ltd. Vs. State of Rajasthan and others reported in (2012) 32 Tax Update 55 and based on the conclusions of the impugned order in regard to the nature of the Contracts / Work Orders / Supply Orders primarily on the said observations that too by reading them out of context and in isolation of the complete order and the in-fact contrary to the directions finally given therein.

5. He submitted that after making certain references of some judgments mentioned therein and the contracts awarded to the appellants the Hon'ble S.B. of the High Court at page 70 had held that:

> ***"be that as it may, since all these questions are open questions yet to be decided by the assessing authority, this court, advisedly not to want to go into the final details of the questions of facts and apply the law propounded by the Superior Court in this regard. The case laws cited before this court can very well be cited before the assessing authority himself who is expected to decide such section 33 of the RVAT Act, 2003 therefore, this court is not inclined to decide the present issues on merits as raised in the present writ petitions and present writ petitions directed only against the show cause notices and even the assessment order passed on connection writ petitions being an appellable order which was passed not to rectify the exemption certificate but for imposing tax itself on transactions of sale involved in the execution of works contract, the validity of which can be adjudged by the higher forum and therefore this court would refuse to invoke its extra ordinary jurisdiction under article 226 of the Constitution of India in the present matters at this stage" and therefore, the writ petitions were dismissed".***

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6. It is further contended by him that being aggrieved by the aforesaid order dated 7.12.2011 of the S.B. of the Rajasthan High Court the appellants had filed D.B. Civil Special Appeal (Writs) 76/2012 and 77/2012 which were decided by the D.B. of the Rajasthan High Court on 13.2.2012. He submitted that the respondent Assistant Commissioner has completely ignored the said order of the Rajasthan High Court and hence the impugned order which has not followed the spirit of the directions of the said order of the Division Bench of the Hon'ble High Court is not sustainable on this limited point itself. In this regard the relevant extract of the said order dated 13.2.2012 is extracted herein below:

> ***".....in the instant case, we find that there is no violation of the aforesaid dictum of the Apex Court as in the notice, it has been mentioned that reading of the two contracts prima facie makes it clear that they are integrated one and cannot be said that notice which was issued was baseless. The ultimate decision is left to the concerned authority. It is open to the assessee to file reply and obtain final decision on submissions....."***

7. The learned counsel submitted that present proceedings were being undertaken by the concerned authority in violation of the spirit of the Division Bench's order dated 13.2.2012 where under an independent exercise based on the reply / pleadings in the appeal was required to be done before reaching any conclusions qua the Contracts / Work Orders / Supply orders in question. It is also submitted that it is a settled principle of law that once the Division Bench had passed the final order the Single Judges order would stand merged therewith and the authorities were required to follow the same unreservedly.

8. The learned counsel further submitted that even otherwise the impugned order very selectively picks certain portion of the order of the learned Single Judge in the earlier Writ Petitions without correctly construing the true context of the said observations and the nature of the same in the factual background of holding that the writ remedy was not the appropriate remedy at that stage. In this regard the Appellant relies on *inter-alia* the judgement in the case of **Good year reported in 1990 (2) SCC 71** in regard to what can constitute a precedent and what qualifies as a passing observations.

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9. The learned counsel submitted further that the impugned orders of both the lower authorities have been passed in complete disregard to the provisions of the Central Sales Tax Act (in short, the CST Act) and the provisions of the concerned RVAT Act and the Rules made there-under. In fact, the perusal of the impugned order clearly reflects that the concerned authority has not at all correctly construed either the provisions of the subject Contracts / Work Orders / Supply Orders involved in the present matter or the entire background of the transactions in question.

10. It was submitted that the RRVUNL, Jaipur in the process of establishing coal based thermal Power Plant at Suratgarh for 1x250 MW decided to avail the services of the Appellant Company for the specific scope of work duly demarcated, pursuant to the requisite process. The scope of the work in respect of the said Power Project required:

(a) designing, procurement and supply of equipments and spares on one part and;

(b) erection, testing, commissioning including civil works on the other part.

11. He submitted that it is clear that the supply of the goods (equipments etc.) was to be based on the specifications provided in the respective Contracts / Supply Orders and hence were clearly tailor made for purposes of the subject project. The terms of the Contracts / Supply Orders provided for the equipments to be strictly as per the specifications and based on the designs specifically in connection therewith. Therefore, the said equipments could not have been usable for any other purposes apart from the use in the subject Projects respectively. It is clear from the reading of the documents on record that the said equipments are manufactured at the facilities of the Appellant either in UP or through other vendors who are also situated outside the State of Rajasthan. It is a settled principle of law that a
sale of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale occasions the movement of goods from one state to another. In the present factual matrix clearly the Contracts / Supply Orders number 3381 for Suratgarh Thermal Power Project was clearly for "Design, Engineering, Procurement & Supply of Equipments." The Erection, Testing, Commissioning and civil works" were covered by separate Contract / Work Order in respect of the respective Power Projects. The supply of equipments therefore in the present case clearly was occasioned from outside the state of Rajasthan in view of the subject Contracts / Supply Orders and hence clearly

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fell within the ambit of an inter-state sale. The terms of the respective Contracts/Supply Orders coupled with the actual manufacturing and consequent movement of the "goods" from outside the state of Rajasthan having been occasioned on account of such Contract No. 3181 and contract No. 56 for Chhabra Power Project Supply Orders clearly leaves no room for doubt that the same were during the course of an inter-state sale. In this regard it is crucial to take into consideration the actual records of the case such as *inter-alia*:

(i) Purchase orders placed on vendors by the Appellant pursuant to the said Contracts/Supply Orders;

(ii) A chart indicating broadly (for the two Power Projects separately) the manufacturing timelines undertaken by the Appellant in respect of the various goods under the said Contracts/Supply Orders which cleanly leaves no room for doubt that the said manufacturing was undertaken exclusively for the said Supply Contracts;

(iii) The details of the designing of the goods undertaken in pursuance of the Contracts/Supply Orders which clearly establishes the tailor make nature of the goods in question;

(iv) The documents showing the payments of taxes made in respect of the clearances effected in view of the said goods;

(v) The technical material and certificates from independent experts showing/evidencing the exclusivity of these goods only for use in the said two Power Plants respectively (with regard to some sample goods only and even for the rest the same could be provided for if required);

(vi) Other miscellaneous material in respect of the above including the site inspections by the representatives of the RRVUNL and the tests undertaken at the site etc. in light of the clauses of the said Contracts/Supply Orders.

12. He submitted that the impugned order completely brushes aside the above legal and factual position emerging from the overwhelming documentary records and merely on the basis of surmises and presumptions sees to include such excludable inter-state sales as intra-state for the purposes of levying tax which would amount in any case to double taxation. In this light of the matter also, the impugned order is completely unsustainable.

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13. It was submitted that the impugned orders of both the lower authorities give undue relevance to the FOR basis of the subject contracts. While doing so, it does not discuss appropriately that merely on account of such a terms in the Contract, how the subject transaction could get qualified as an intra-state sale, inspite of the fact that the occasioning of the movement of the subject goods took place clearly on account of the Contracts/Supply Orders entered between the Appellant Company and the RRVUNL Apart from this, the bare perusal of the terms of the Contract coupled with other documentary records of the case clearly establish that the subject goods were clearly designed strictly and exclusively as per the specifications under the Contracts/Supply Orders and hence were clearly tailor-made for the purposes of the respective subject Projects only. Therefore, ignoring all these critical aspects merely on the basis of one irrelevant parameter, it is not clear as to why a conclusion has been reached in the impugned order that the subject transaction would qualify as intra-state sales.

14. Even otherwise, he submitted, it is relevant to peruse the terms of the subject Contracts/Supply Orders as a whole and not in isolation. Once the same is read as a whole, it is clear that the conclusions reached in the impugned order are contrary to the correct facts emerging there-from. In this regard, it is relevant to note some of the terms in the relevant Contracts/Supply Orders which are extracted herein below (from one of the Contracts/Supply Orders) for the purposes of convenience:

> ***"e. In case the consignments are to be insured to cover risk in transit such insurance charges will be extra and will be to the Owner's account provided it is not included in the price as per purchase order……'***

15. The perusal of the above clause apart from other clauses in the subject Contracts/Supply Orders clearly throws light he contended that on the erroneous assumptions reached by the authorities below for concluding that the subject sale of the goods could not be held to be covered as inter-state sales. The above clause clearly shows that the insurance charges were to be met by "owner" which is RRVUNL and not of the Appellant. In addition to the same, **one more clause which throws light in this regard is the clause pertaining to dispatch of the equipments in question where-under requisite inspection and testing at the manufacturing site by the "owner" i.e. is also provided for before the dispatch.** In addition the clause pertaining to the components of the "price" element chargeable from the

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"owner", which were mandated to be separately indicated by the Appellant as per the terms of the Contracts/Supply Orders was also ignored completely while reaching baseless conclusions in the impugned order. **Therefore, from the scheme of the subject Contracts/Supply Orders it is clearly established that the subjected goods were required to be made strictly as per he specifications provided by the owner i.e. Rajasthan Rajya Vidyut Utpadan Nigam Limited and no deviation there-from was permissible** and hence when from the documents on record, which have not been disputed, it is clear that the making/manufacturing of the subject goods took place at the facilities of the appellant, which are admittedly outside the state of Rajasthan, only on account of the subject Contracts/Supply Orders to the state of Rajasthan, the same clearly were inter-state sales.

16. It was further argued that the both the lower authorities have failed to consider the correct position of law in respect of what qualifies as an intra-state sale and what qualifies as an inter-state sale. Consequently, the scheme of the Constitution of India and the provisions of the Central Sales Tax Act and the Rajasthan VAT Act have not been properly construed while reaching the conclusions in the impugned order. In the judgement of **State of Madras vs. Gannon Dunkerley and Company reported in AIR 1958 SC 560**, it was held that the expression "sale of goods" in entry 48 in list II of the 7th schedule to the Government of India Act, 1935 had the same meaning as the said expression had in the Sale of Goods Act, 1930, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. It was held in the said judgement that since a building contract could not be divided, there could not be any sale of goods in the case of such a contract. Consequently, it leads in to 46 constitutional ammedment.

17. More so he argued when the constitutional validity of the 46th Amendment came to be challenged, the same was considered in detail in the judgement of **Builders' Association of India vs. Union of India reported in (1989) 73 STC 370 / 1989 2 SCC 645.** The relevant portion of the said judgement is extracted herein below:

> ***"36. After the 46th Amendment the works contract which was an indivisible one by a legal fiction altered into a contract which is divisible into one for sale of goods and the other for supply of labour and services. After the 46th Amendment, it has become possible for the***

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States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above, it could not have been the contention of the revenue prior to the 46th Amendment that when the goods and materials had been supplied under a distinct and separate contract by the contractor for the purpose of construction of a building the assessment of sales tax could be made ignoring the restrictions and conditions incorporated in Article 286 of the Constitution.

If the power to tax a sale in an ordinary sense s subject to certain conditions and restrictons imposed by the Constitution, the power to tax a transaction which is deemed to be a sale under. Article 266(29-A) of the Constitution should also be subject to the same restrictions and conditions."

18. Therefore, submitted by the learned counsel from the perusal of the above ratio by the Constitution Bench of the Hon'ble Supreme Court, it was held that the Sales Tax Laws passed by the Legislatures of the states levying taxes on the transfer of property in goods involved in the execution of a works contract are valid pursuant to the 46th Amendment in the Constitution of India, but **the same were strictly subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution.**

19. He further contended that the critical issue emerging with regard to such limitations was again dealt with by a Constitution Bench of the Hon'ble Supreme Court in the case of **Gannon Dunkerley and Company and Others vs. State of Rajasthan and Others reported in (1993) 88 STC 204/ 1993 1 SCC 364.** in the said judgement, the Hon'ble Court took note of the legislative power of the states under entry 54 of the State list which were subject to two limitations- one flowing from the entry itself which makes the said power "subject to the provisions of Entry 92 - A list 1" and the other flowing from the prohibition contained in Article 286 under Entry 92- A list 1, parliament has the power to make a law in respect of taxes on sale or purchase of goods other than newspapers where such sale or purchase takes

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place in the course of inter-state trade or commerce. The levy and collection of such tax is governed by Article 269. The said scheme therefore shows that the legislative power of the states under Entry 54 of the State List is not available in respect of transaction of sale or purchase which take place in the course of inter-state trade or commerce. Similarly clause 1 of Article 286 prohibits the states from making a law imposing or authorizing the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place (a) outside the state or (b) in the course of the import of goods into or export of the goods out of the territory of India. In view of the aforesaid limitations imposed by the Constitution, on the legislative powers of the states under Entry 54 of the State list, it is beyond the competence of the State legislature to make a law imposing or authorizing the imposition of a tax on transfer of property in goods involved in the execution of a works contract in respect of transactions which take place in the course of inter-state trade or commerce or transactions which constitute sale outside the state or sales in the course of import or export.

20. Learned Counsel to the Appellant Company further submitted that the Rajasthan State Legislature being conscious of the limitations, as provided in the Constitutional framework and as outlined in the various judgements by the Hon'ble Supreme Court as also briefly covered in the preceding paragraphs, has clearly taken the necessary precautions in respect of the applicable provisions dealing with the issue of deemed sale under the Works Contract mechanism as provided in the Rajasthan VAT Act and the Rules framed thereunder and consequently also taken care of the same by the issuance of appropriate notifications in this regard from time to time. The impugned orders passed by both the lower authorities heavily rely upon the fact that the subject Contracts/Work Orders/Supply Orders are to be treated as one turnkey contract and cannot be divided. The said issue has been discussed in the impugned order in view of a notification dated 11.08.2006 providing for issuance of an Exemption Certificate in certain cases. They submit that both the impugned orders primarily proceeds on two issues:

i) Whether the Exemption Certificate issued to the Appellant dated 13.11.2007 and 20.2.2009 in respect of Work Order No. 3382 and Work Order No. 57 qualifies under item 2 or item 3 of the List outlined in the aforementioned notification dated 11.08.2006.

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ii) Whether the Contracts/Work Orders/Supply Orders separately executed and having separate independent Scope of Works could be mandatorily clubbed as one Contract by assuming the same to be indivisible and consequentially covered by the terms of the above notification, whereby mandatorily the Appellant was required to deposit tax as per the requisite entry provided in the notification and that too on the composite value ignoring the mandatory exclusions in respect of inter-state sales which apply even in such cases.

21. He Further contended that the authorities below have in respect of issue No. 1 above concluded that the subject Contracts / Work Orders number 3382 & 57 fall under entry 3 of the List of the said notification and not under entry 2 of the said List as claimed by the Appellant (which was also duly accepted by the authorities themselves initially by issuance of the requisite Exemption Certificate after undertaking the statutory exercise). In this regard, it is essential to note that having issued the requisite exemption certificates, it was not permissible in the first place to change the view without any statutory powers to do so in this regard. The Appellant had raised issues pertaining to the jurisdiction of the concerned authorities to revise the earlier Exemption Certificates merely on the basis of change of opinion. It is a settled principle of law that such decisions cannot be reviewed merely on the basis of change of opinion of another authority especially when the first decision has been taken on the basis of all requisite material and there is no allegation of suppression of material facts. In the facts of the present case, it is clear that the Exemption Certificate came to be issued pursuant to the application made by the appellant herein. Admittedly, the requisite factual matrix in the form of the Contracts / Supply Orders / Work Orders in question were available with the authorities and pursuant to the examination of all the material on record relevant for the decision, the Exemption Certificate came to be duly issued. Therefore, when there was no suppression, there was no occasion or jurisdiction to recall the said Exemption Certificate by reclassifying the subject contracts / work orders under entry 3 instead of entry 2 of the list of the subject notification In this regard the following judgements are also required to be considered where in it has been held that the mere change of opinion cannot be the basis of the reopening the proceedings:

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I. CIT Vs. Kelvinator of India 2010 (2) S.C.C. 723;

II. Blackstone Rubber Industries (P) Ltd. v. State of Rajasthan & Ors. RLW 2001 (3) Raj 1486;

III). Parikh and sons V. Trade Tax Officer, Sector 6 (109) STC 631;

IV). Milan Supari Stores V. Assistant Commissioner of Sales Tax and others, 1994 (95) STC 165;

V). Indian and Eastern Newspaper, Society Commissioner of Income Tax, New Delhi, 1979 (119) FIR 996;

VI). Eureka Forbes Ltd. v. State of Bihar and others, 2000 (119) SEC 460;

22. Such an exercise he argued, cannot be sustained especially when the same is merely on the basis of a change of opinion as is apparent from the facts of the present case. In this regard, exercise of such a power is covered under section 33 of the VAT Act. Which deals with "Rectification of a mistake" under the guise of the said section, is not permissible to review an earlier order which amounts to a change of opinion. .

23. It is proper to submit here, contended by the counsel that the exemption certificate bearing No. 15/02 for the years under appeals was issued on 13.11.2007 after expiry of four years from the date of order to be rectified". Since the exemption certificate was issued on 13.11.2007, therefore, it would have been rectified only on or before 12.11.2011, the assessment order was passed by the respondent Assistant Commissioner on 3.5.2012 which is not on legal footings.

24. As far as the second issue is concerned, the impugned order proceeds on various erroneous assumptions such as:

i) That the subject Contacts / Work Orders / Supply Orders were indivisible in so far as the same were for the same Thermal Power project either at Suratgarh or Chhabra Rajasthan;

ii) That since they were indivisible and hence a turnkey contract, the notification dated 11.08.2006 were required to be invoked *per-se* without going into the question as to whether the transactions pertaining to the supply of equipments was in the course of inter-state sales or not and other relevant aspects about the applicability of the provisions in this regard.

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It is submitted that the impugned order ignores the crucial fact that two separate independent Contract / Work Orders / Supply Orders cannot be clubbed merely on the basis of presumptions.

25. More so in his arguments he argued even assuming without admitting that the said Contracts / Work Orders pertaining to the respective Thermal Power Projects were to be treated as one contract, there is no justification or legal basis for ignoring the crucial aspect of the sales of the goods in question (pertaining to the Supply Contract) having been occasioned solely on the basis of the subject Contracts / Supply Orders in this regard. This crucial aspect has completely been brushed aside while passing the impugned order. As has already been mentioned in the preceding paragraphs that the subject Contracts / Supply Orders clearly provided for the subject goods, which are required to be supplied under the said Contracts / Supply Orders, to be of particular specifications and designs and hence are clearly tailor made for the respective subject Projects only. But for the said Contracts / Supply Orders, there was no occasion or question of the Appellant manufacturing / making such tailor made goods and there was no question of such goods to move from the respective facilities i.e. either at the Appellant's UP facility or from the facilities of the vendors of the Appellant to the state of Rajasthan. In this regard, the bare perusal of the detailed specifications with regard to each of the items required to be supplied under the subject Contracts / Supply Orders leaves no room for doubt that the subject goods have been made specifically for the said Project and only on account of the subject Contracts / Supply Orders having been entered with the RRVUNL.

26. It is further submitted that perusal of the above sample specification clearly establishes the unique requirements of the supplies to be made and the contractual obligations imposed upon the appellant for meeting such requirements by the awarder i.e. RRVUNL. In this light of the matter, it is established beyond doubt that the sale in the present case has occasioned the movement of goods from the various states to Rajasthan and hence are clearly inter-state sales. In this regard following judgments have been discussed for the concept of what is covered in the ambit of sale that "occasions the movement of the goods".

i) (1985) 4 SCC 119 Deputy Commissioner of Income Tax & Sales Tax Ernakulam vs. India Explosives Ltd.

ii) (1997) 7 SCC 190 State of Maharashtra v Embee Corp Bombay

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iii) 1966 17 STC 473 SC/1966 (3) SCR 352 K.G. Khosla & Co. v Deputy Commissioner of Commercial Tax

27. In addition to the above he submitted that even cases of Works Contract where a deeming fiction is created for bring a portion of the component for VAT purposes as per the amendment in the Constitution and pursuant to which the consequential amendments have been brought in the various state VAT legislations including in the State of Rajasthan, it is clearly been held in different judicial pronouncements that the inter-state sales are required to be excluded from the state VAT. Some of the indicative cases are as follows:

i) Larsen and Toubro Limited Vs Commissioner of Commercial Taxes 2003 (132) STC 272 (AP);

ii) East India Cotton Manufacturing Company Limited Vs State of Haryana 1993 ILR 109 (Punjab and Haryana);

iii) Order No C3/24336/11/CT dated 28.3.2012 in the case of Hyderabad Industries.

28. The learned counsel further submitted that both the lower authorities have ignored the correct scheme of the Rajasthan VAT Act which is required to be in conformity with the Constitutional provisions and the restrictions contemplated therein. Such provisions of the Rajasthan VAT Act can obviously not be contrary to the said Constitutional restrictions or to the provisions of the Central Sales Tax Act. In-fact, the inter-state sales are kept out of the ambit of the said provisions of the Rajasthan VAT Act even in the case of the works contract which is evident from the definition of works contract as provided for in section 2 (44) of the Rajasthan VAT Act read with the definition of "sale" provided for in section 2 (35) of he said Act. The perusal of he said provision, along-with other provisions of the Rajasthan VAT Act, clearly establishes that in conformity with the overall VAT regime and in consonance with the Constitutional Framework as enunciated in the judgments earlier outlined here-in-above, the inter-state sales are in-fact kept outside the purview of the said Act even in the case of the deeming contract contemplated under the works contract mechanism. An obvious insight into this can be gathered *inter-alia* from the contents of the notification dated 11,8,2006 produced below:

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"(iv) [Provided also **that in case of turnkey works contract** awarded by a Department of any Government, a corporation, a public Undertaking, a co-operative society, a local body, a statutory body, an autonomous body, a trust, a private limited company or public Limited company **having a separate contract for supply of goods, and in pursuance of such contract**, the contractor claims that **the sale of goods has occasioned in the course of inter State trade and commerce by the contractor to the awarder from outside the State,** the Assisting Authority or an officer authorized by the Commissioner n this behalf on an application submitted by said contractor, shall within ten days of receipt of such application on **being satisfied tht the transaction of sale took place in the course of inter State trade and Commerce,** pass an order directing the awarder not to deduct the amount in lieu of tax from the payment to be made in this behalf. The order so issued shall be provisional in nature and applicable only for deduction of amount in lieu of tax under sub section (2) of section 20 of the Rajasthan Value Added Tax Act, 2003 and shall be subject to assessment under the Act.]"

29. The perusal of the above clearly establishes beyond doubt that even under the VAT regime applicable in the state of Rajasthan, it is clearly provided even in respect of turnkey work contract that where in relation thereto a separate contract for supply of goods has been executed and in pursuance thereof the sale of goods has got occasioned, the same would qualify as inter-state trade and commerce and hence the requisite taxability event under the provisions of the Rajasthan VAT Act and the Rules there-under would not be applicable to the same. .

30. The above notification also clearly establishes he contended that the authorities are conscious of their being a separate "contract for supply of goods" even in a case of turnkey works contract and are further conscious of such a contract resulting in the occasioning of the movement of such goods to be supplied under the contract from outside the state of Rajasthan thereby resulting in a case of inter-state sales. Being conscious of the said practical

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position, requisite framework has consciously been provided under the relevant provisions of the Rajasthan VAT Act and the Rules there-under to keep such component of inter-state sales outside the purview of applicable tax qua works contract also.

31. It is also relevant to note in the facts of the present case he argued that position has expressly been recognized in light of the facts of the present case itself by passing an order dated 27.7.2010 under the above referred notification itself whereby it was clearly **recognized and accepted** that the subjected goods under the subject Contracts / Supply Orders had moved only on account of the said Contracts / Supply Orders to the state of Rajasthan and hence not covered under the applicable regime.

32. The Appellant Company further submitted that the authority below has not given any justifiable reasons as to how the provisions of section 26 of the Rajasthan VAT Act could be made applicable in the facts of the present case. The said section 26 deals with "Escaped assessments" and therefore as per the settled principle of law enunciated in a plethora of judgments, the said section is required to be strictly construed. The authorities would get jurisdiction to invoke the said section only in the event of the necessary ingredients under the said section getting duly satisfied.

33. That as submitted above, he further argued that the tenders were submitted by their Head Office at New Delhi; the entire correspondence was exchanged between the awarder and their head office at New Delhi; the contracts were entered between the awarder and their Head Office at New Delhi; the bills were raised by their Delhi Head Office and payments were also made by the awarder to their Delhi Head Office; even C forms for supply of goods through other manufacturers were also issued by their factory at Ghaziabad, the competent authority to proceed in their case is the CTO, Circle A, Jaipur and the assumption of jurisdiction by the CTO, Suratgarh and later on by the respondent Assistant Commissioner, Sriganganagar is abinitio illegal and without any authority of law. It is further submitted that as far back as on 22.2.1957 vide Notification No. F.9(2)P(ST)/56 dated 22.2.1957 which was published on 23.2.1957 issued under sub section (1) of section 7 of the Central Sales Tax Act, 1956 the Central Government have specified the persons in column 3 of the schedule therein as the authority to whom the dealers described in the corresponding entry 2 of the said schedule shall make application for registration under the said section and as per item No. 3 for dealers having no fixed place of business in a State. "the sales Tax Officer,

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Circle A, Jaipur City, is the authority to whom application for registration under section 7 of the Central Sales Tax Act. He submitted ruling of the Rajasthan Sales Tax Tribunal (now Rajasthan Tax Board) in the case of Director General of Supplies and Disposals, New Delhi Vs. Commercial Taxes Officer, Circle B, Jaipur reported in 1986 RTC 290 and the Hon'ble D.B. of the Tax Board Ajmer in his support.

34. In support of his contention, he submitted that the Ho'ble Supreme Court in the case of Kiran Singh Vs. Chaman Paswan reported in 1955 SCR Vol. 1 117/1955 AIR SC 340 have held that "it is a fundamental principle well established that a degree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied on even at the stage of execution or even in collateral proceedings.

35. It is further submitted that the Board of Revenue for Rajasthan in the case of Bharat Overseas Pvt. Ltd. Vs CTO reported in 1979 TR 77 in para 4 have held that "in several of the rulings not only of the Board of Revenue but also of the Hon'ble High Court and Supreme Court which have been cited by the learned counsels for the parties it has been held that the question of jurisdiction can be challenged at any stage."

36. It is further submitted that the Rajasthan High Court in the case of Commercial Taxes Officer, Ajmer Vs. Deputy Controller of Stores, Western Railway reported in (1994) 93 STC 1 have held that "for the purpose of initiating proceedings under section 12, a notice in the prescribed form was a mandatory requirement and if the notice was not issued under the said section that the entire proceedings would be deemed to be void abinitio. **Even the consent of he other party would not confer jurisdiction on the assessing authority to frame assessment under section 12 if the proceedings have not validly been initiated.**

37. He contended that the impugned order under section 24 of the Act has been passed by the respondent Assistant Commissioner in utter disregard of mandatory provisions of section 24 (1) of the Act which reads as under:

> **"every return furnished by a registered dealer shall be subjected to such scrutiny as may be determined by the Commissioner to verify, the correctness and if any error is detected, the assessing authority or the officer authorized by the Commissioner, shall within one year**

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from the last date for filing such return, such a notice in the prescribed form on the dealer to rectify the error and file a revised return as may be specified therein".

since the respondent Assistant Commissioner has not issued any notice in the prescribed form as contemplated under section 24 (1) of the Rajasthan Value Added Tax Act, 2003 inasmuch as the delegated authority has not prescribed any form for assumption of jurisdiction under section 24(1) of the Act in terms of the provisions of the Act therefore, the very assumption of jurisdiction and passing of the impugned order is abinitio illegal and without any authority of law.

38. He submitted that no notice has been given in prescribed form therefore, without comply with the legal requirements of the provisions of the Act as well as Rules stands null and void as orders were passed under section 26 and 33 if the RVAT Act. He relied upon following citations in his support.

M/S Braham Dutt Versus Sales Tax Officer, Sikar and others 1968 Tax Reporter 61

CTO s. Prem Shankar Agarwal (1998) 110 STC 379

M/s Jaipur Udyog Limited Commercial Taxes Officer (1979) 44 STC 456

Commercial Taxes Officer Versus Deputy Controller of Stores (1994) 93 STC 1

Rajdhani Barthan Bhandar Vs. ACTO (1998) 110 STC 358

39. He vehemently argued that the learned Deputy Commissioner (Appeals) (Appellate Authority) has exceeded his jurisdiction in passing the impugned order, as the appellant had objected levy of exemption fee at 2.25 per cent levied by the respondent Assistant Commissioner while passing the rectification order dated 4.10.2012 instead of 1.5 percent which was so levied by the Assistant Commissioner while passing the assessment order dated 29.9.2011 had arbitrarily enhanced the same to 2.25 per cent. The enhancement made by the respondent Assistant Commissioner is against the principles of natural justice inasmuch as the appellant had not been given any opportunity of putting up their case before him. The learned Deputy Commissioner (Appeals) has travelled beyond his jurisdiction in not adjudicating their main grounds of appeal that as the sales under both the supply contracts were inter- state sales for which the awarder has issued C forms, as such as contended in grounds of appeal no tax liability is involved

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but the Assessing Authority has illegally converted the same as intra state one and have levied the tax thereon. But the Appellate Authority has partly accepted the contention of the assessing authority that the transactions were intra state one and have determined the exemption fee thereon at the rate of 2.25 per cent. He submitted that the appellant altogether had been contending that in view of the provisions of law interpreted by the Supreme Court, Rajasthan High Court, other High Courts and this Hon'ble Tax Board the transactions under contract No. 3381 & 56 were in the course of inter-state trade and commerce and as such no tax can be levied under the RVAT Act.

40. He submitted in support of his contenetion that initially a question came up for consideration before the Hon'ble Supreme Court in the case of Tata Iron Steel Company Limited Vs. S.R. Sarkar and others reported in (1960) 11 STC 655 and at page 667 interpreting the provisions of section 3 of the CST Act their lordships have held as under.

> "In our view he contended that clause (b) of section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto....Clause (a) of section 3 covers sales other than those included clause (b), in which the movement of the goods from one State to another is the result of a covenant or incident of the contract of sale and **property in the goods passes in either State"**

41. Thus passing of property in the State of delivery is immaterial for inter-state sales made under section 3(a). their case it is not in dispute that the goods were tailor made which were manufactured either in their factory in Uttar Pradesh or on receipt of the orders from the awarders the appellants had placed orders on the manufacturers in other States with the specific instructions that they will made subsequent inter- state sales under section 3(b) to the awarder. As such they have directed the manufacturers to dispatch the goods at the site of the awarder making invoice in the name of the appellants and in the B.Rs which were raised by such manufacturers they were the consignors and consignee was the awarder n the account of the appellant. It is further submitted that before the dispatch of the goods they were duly inspected by the representatives of the awarder. Thus, the appropriation of the goods towards the contract is always either at the factories of the appellants or the factories of the dealers or the manufacturers on whom the appellants have placed counter orders and the inspection of the goods was therefore, made at the respective factories of the manufacturers.

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Thus, the movement of the goods in question and their sale is inextricably connected with each other, therefore, the sales in question are in the course of inter-state trade or commerce either under section 3(a) or 3 (b) of the CST Act as the case may be. He cited the Hon'ble Supreme Court in the case of K.G. Khosla and Company Pvt. Ltd. Vs. Deputy Commissioner of Commercial Taxes reported in (1966) 17 STC 473 had an occasion to consider provisions of section 3(a) and 5(2) of the Central Sales Tax Act. The question was whether the sales by the assessee to the Government departments were in the course of import and exempt from taxation under section 5(2) of the Central Sales Tax Act, 1956 and the Hon'ble Supreme Court held that-

(i) **"the expression occasions the movement of the goods occurring in section 3(a) and section 5(2) has the same meaning".**

(ii) **That before a sale could be said to have occasioned the import it was not necessary that the sale should have preceded the import;**

(iii) **That the movement of the goods from Belgium to India was incidental to the contract that they would be manufactured in Belgium inspected there and imported into India for the consignee and it was in pursuance of the conditions of the contract between the assessee and the Director General of Supplies. There was no possibility of the goods being diverted by the assessee for any other purpose and therefore, the sale took place in the course of import within section 5(2) of the Act and exempt from taxation"**

42. It is further submitted that again the Supreme Court in the case of Union of India and another Vs. K.G. Khosla and Company Limited reported in (1979) 43 STC 457 had an occasion to interpret the provisions of section 3(a) of the CST Act. On appeal to the Supreme Court, it was held as under:

> **"(i) that if a contract of sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be on inter-state sale. But for the purpose of section 3(a) of the Act it is not necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. A sale can be an inter-state sale, even if the contract of**

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sale does not itself provide for the movement of goods from one State to another but such movement is the result of a covenant in the contract of sale or is an incident of that contract;

ii) that goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by the respondent only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Although the contracts of sale did not require or provide that the goods should be moved from Faridabad to Delhi, the movement of the goods was occasioned from Faridabad to Delhi as a result or incident of the contracts of sale made in Delhi. The High Court was therefore, right in holding that the sales were inter State sales and that the turn-over of such sales was assessable to sales tax under the Central Act by the sales tax authorities of Faridabad.

43. The question as regards the nature of the sale, that is whether it is an inter- state sale or an intra state sale, does not depend upon as to which State the property in the goods passes. It may pass in either State and yet the sale can be an inter State sale"

44. It is further submitted that a similar matter had come up for consideration before the Supreme Court in the case of English Electric Company of India Ltd. Vs. Deputy Commercial Taxes Officer reported in (1976) 38 STC 375 and on appeal to the Supreme Court the Supreme Court held that "the appellant was one entity and it carried on business at different branches. Branches are not independent and separate entities. They are different agencies. The contract of sale was between the appellant and the Bombay buyer. When a branch of a company forwards a buyer's order to the principal factory of the company and instructs them to dispatch the goods direct to the buyer and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch.

45. It is further submitted that the Hon'ble Supreme Court in the case of South India Viscos Limited Vs. State of Tamil Nadu reported in (1981) 48 STC 232 have held that "if there is a conceivable link between a contract of sale and the movement of the goods from one State to another in order to discharge the obligation under the contract of sale the inter position of an agent of the seller who may temporarily intercept the movement will not alter the inter stat character of sale".

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46. It is further submitted that the Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd. and another Vs. Commercial Taxes Officer reported in (1985) 60 STC 301 have held that the order placed by the customer was an order placed with the company and for the purpose of fulfilling that order the manufactured goods commenced their journey from the registered office in the State of Andhra Pradesh to the branch outside the State for delivery of the goods to the customer. Both the registered office and the branch office were offices of the same company: they did not possess separate juridical personalities. The movement of the goods from the registered office at Hyderabad was occasioned by the order placed by the customer ad was an incident of the contract, and therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-state movement. The sale transactions were inter-state sales under section 3(a) of the Act."

47. It will not be out of place to submit here argued by the counsel that when the goods are being dispatched to a branch from Rajasthan and there is some envelop or some other indication along with documents given to the driver of the vehicle pointing out to the Branch Manager that the goods are meant for a particular customer and at destination the delivery is taken by the Branch Manager, thereafter the goods were delivered to that person invariably such transactions have been treated by the department as an inter-state sale and not branch transfer though at destination the delivery was taken by the branch and thereafter the goods are delivered to that person. Thus there is a conceivable link between the dispatch of goods and the delivery of the goods to the customer at destination in other State.

48. It is further submitted that as submitted above, the Hon'ble Supreme Court in the case of K.G. Khosla and Company Private Limited Vs. Deputy Commissioner reported in 17 STC 473 have held that the "the expression occasions the movement of goods occurring in section 3(a) and section 5(2) of the CST Act has the same meaning". It is submitted that in the case of M/s The Indure and another Vs. invited tenders Commercial Taxes Officer reported in (2010) 34 VST 309 wherein on appeal to the Supreme Court the Hon'ble Supreme Court held that "the appellant company was entitled to claim the benefit of section 5 (2) of the Act in relation to the import of MS pipes from South Korea". In view of the above facts he submitted that the goods had imported from Korea the delivery thereof was taken by the

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appellants at Calcutta port and thereafter they were transported to Farakka where they were used in the execution of the works contract and the deemed sale thereof have been held by the Supreme Court as sale the course of import of the goods into the territory of India and therefore, exempt from tax by virtue of provisions of section 5(2) of the CST Act. Applying the aforesaid principle to the facts and circumstances of the present case it is submitted that as the goods have been directly dispatched by their factories in Uttar Pradesh and /or from the manufacturers from outside the State directly at site therefore, the sales are falling either under section 3(a) or 3((b) of the CST Act and as such the question of levy of tax treating them as local sale under the RVAT Act does not arise simply because the delivery was F.O.R.Hon'ble Tax Board supported the ratio in the case of Consultant Combustion Engineers Vs. CTO Works Contract and Leasing Tax, Zone 2, Jaipur reported in (2012) 32 Tax update 84.

49. He also relied that the Madras High Court in the case of State of Tamil Nadu Vs. Mahindra and Mahindra limited reported in (2012) 58 VST 483.

50. It is proper to submit here argued by the counsel of the appellant that the State Government on 5.7.2010 had issued a notification No.F.4(24)FD/Tax/90/Pt.30 under section 20(2) of the RVAT Act, 2003 making amendments in Notification No.F.12(63)FD/Tax/2005-81 dated 11.8.2006. In view of the aforesaid notification dated 5.7.2010 referred to above the Commercial Taxes Officer, Works Contract and Leasing Tax, Sriganganagar wrote a letter No. 771 dt. 20.7.2008 to the Superintending Engineer (TD-II), RRVUNL, Jaipur informing him that contract No. RVUN/SE(TD-II)/TDM-I/STPS-BOP(s) TNS-1-D.3381 dated 3.10.2006 for supply of goods worth Rs. 186 crores has been entered between him and the appellants M/s The Indure Pvt. Ltd. and that for supply of goods under the aforesaid contract C forms are being supplied by him, as such t is a clear cut inter-state sale, therefore, on the supplies made under this contract no. TDS is to be deducted while making payment in view of notification dt.5.8.2010 of the State Government.

51. That without prejudice to the aforesaid submissions and without conceding on the point it is further submitted that as stated above, for the second contract No. 3282 and contract No. 57 the appellant had applied for the grant of exemption certificate which was duly issued determining the rate of exemption fee at the rate of 1.5 per cent and the exemption certificate has

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not been amended by the respondent assessing authority. Therefore, the levy of exemption fee at the rate of 2.25 per cent instead of 1.5 per cent is per-se arbitrary, illegal and bad in law. Therefore, the action of the learned DC (Appeals) is abinitio illegal and without any authority of law inasmuch as unless the exemption certificate was amended the learned DC (Appeals) should not have ordered for payment of exemption fee at the rate of 2.25 per cent on both the contracts.

52. He submitted that a similar matter had come up for consideration before this Hon'ble Tax Board in the case of M/s Elect. Mechanical Engineering Corporation Vs. Assistant Commissioner reported in (2006) 18 Tax update 43 wherein the question for determination by the Additional Commissioner (VAT) was as to which of rate exemption fee would be applicable according to notification dated 29.3.2011 in construction of pre-fabricated steel building. The Additional Commissioner decided that in such construction the rate of exemption fee would be 3 per cent. Against the order of the Additional Commissioner appeal was filed before this Hon'ble Board and it was held that "in works contract the exemption fee of 1.5 per cent would be applicable is pre-fabricated steel building as per notification dated 29.3.2001".

53. It is further submitted that the Rajasthan High Court in the case of Asstt. Commissioner, Special Circle Vs. HEG Limited reported in (2009) 23 Tax Update 23 have held that "the assessing authority was not justified in imposing or computing the exemption under notification dated. 28.6.2003 on the basis of gross turn over including therein the turn over representing branch transfers, consignment transfers, inter-state sale or export sale made by the assessee during the relevant year. The assessing authority was therefore, directed to recomputed the exemption fee excluding these components from the annual gross turn over and refund the excess exemption fee if any collected from the respondent assessee with interest at 12 per cent annum from the date of collection till the date of refund within a period of one month from today". The learned Counsel relied upon following judgments also Asstt. Commissioner, Works Contract and Leasing Tax Vs. M/s Unitech Limited, reported in (2011) 31 Tax update 68 (RTB) 16 Tax Update 43 (RTB).

54. He submitted that since the levy of differential tax liability is abinitio illegal and without any authority of law the question of levy of interest does not arise. Moreover, the appellants would be entitled to get substantial refund therefore, the levy of interest does not arise.

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55. Sh.Sharma contended that the learned Appellate Authority has erred in not adjudicating their grounds of appeal relating to imposition of penalty of Rs. 2500 which was imposed by the Asstt. Commissioner in a routine manner as if it is automatic without complying with the mandatory provisions of law. He relied upon the following judgments;-

M/s Associated Soap Stone Distributing Company 29 STC 699

M/s Swadeshi Cotton Mills Co.Ltd. Kanpur Vs. Commissioner of Sales Tax, Lucknow 29 STC 502.

Taruleta Syam and another Vs.Agricultural Income-Tax Officer 99 ITR 532

56- On behalf of the respondent Learned DGA contended that the Appellate Authority wrongly deleted the levy of 4% and 12.5% on the sale of material which was liable to be taxed. He also contended that the sale cannot be bifurcated by the assessee himself into State Sale and inter State sale. He contended that appellant wrongly claimed exemption of goods as a sale in the course of inter-State sale instead of local sale. He supported the order of assessing authority, and requested to confirm the orders of the assessing authority.

57- We have pursued the record as well as the contentions submitted for both the sides. From the perusal of the record it is clear that the main and rectified orders passed by the assessing authority were challenged by the appellant by way of filing appeals before the Appellate Authority, the said authority passed orders on 08-03-2013, 01-03-2013, 11.03.2013 whereby the cases were remanded for fresh orders to the assessing authority on certain directions. However, the above dated remand orders were further challenged by the appellant as well as the Revenue before the Tax Board. Before adjudication of these appeals by the Tax Board, the assessing authority finally decided all the remanded cases vide seperate orders dated 24.06.2013. Meaning thereby the orders passed by Appellate Authority were complied with before adjudication of the appeals by Tax Board, therefore, the appeals have become infructuous. All the main assessment orders dated 28.02.2012, 03-05-2012, 29-09-2011 as well as rectified order dated 01-03-2013 (2008-09) and 17.04.2012 (2009-10) passed by Assessing Authority which were remanded by the appellate authority with certain directions to assessing authority which were complied with by the assessing authority therefore, orders of Appellate Authority are not in existence because fresh orders have been passed on 24.06.2013 by the Assessing Authority. Therefore, in our humble opinion, the appeals filed by the appellant as well as revenue have become infructuous in view of the fact that the Assessing Authority has decided the matters finally on remand. Therefore, no interference is required in the impugned orders in the light of preposition laid by the Hon'ble High Court in the judgment of **Assistant Commissioner, Hanumangarh Vs. Mohit Trading Com. reported in (1999) 25 Tax update at page 59 SBC No. 199/2009 wherein it has been held that:**

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"remand order dated 21.9.2007 was further challenged by the Department before the learned Tax Board. However, before adjudication of the appeal by the Tax Board filed by the Department, the assessing authority finally decided the matter vide order dated 31.11.2007 in pursuance of the remand order passed by Dy. Commissioner (Appeals on 21.9.2007. Meaning thereby the order passed by Dy. Commissioner (Appeals was compiled with before adjudication of the appeal by Tax Board, therefore, when the appeal came up for hearing before the learned Tax Board, the Tax Board observed that the appeal has become infructuous because the order dated 21.9.2007 is not in existence because a fresh order has been passed on 30.11.2007 by the Assistant Commissioner, Commercial Taxes. While observing the said fact, the learned Tax Board rendered the said appeal infructuous vide impugned order dated 10.11.2008."

Similar principle has been laid in the judgment of the following Hon'ble Courts;

1- ACTO Vs Kesharilal (1991) 9 R.T.J.S.8(Raj.)

2-CTO,AE Vs Vishal Trading Co. (1997) 20 Tax World 64(RTT)

3-CTO Vs Agarwal Salt Co. 38 Tax World 16 (R.T.B.)

Therefore, in the light of the above judgments where in similar circumstances exist with out going into the merit of the case in our opinion, all the above appeals filed by the appellant as well as revenue have become infructuous in view of the fact that the Assessing Authority has decided the matter finally on remand.

Therefore all the appeals filed by both the sides are dismissed.

Order pronounced.

23-11-2015

(ISHWARI LAL VERMA)
Member

23.11.2015

(MADAN LAL)
Member