

M/S KESHOB PLANTS v. BHARAT SANCHAR NIGAM LIMITED 649
AND OTHERS (*Rajesh Bindal, J.*)

Before Rajesh Bindal, J.

M/S KESHOB PLANTS,—*Petitioner*

versus

BHARAT SANCHAR NIGAM LIMITED AND OTHERS,—
Respondents

C.W.P. No. 19579 of 2002

13th August, 2008

Constitution of India, 1950—Art. 226 and 286—Punjab General Sales Tax Act, 1948—S.10C—Deduction of tax from payment to works contractors—Whether State Legislature competent to levy tax on work contracts—Held, no—Petition allowed, S.10C imposing tax held to be ultra vires to Constitution.

Held, that the provisions of Section 10C of the Punjab General Sales Tax Act, 1948 which are para materia to the provisions, which were struck down by Hon'ble the Supreme Court and various High Courts, have to be declared ultra vires to the Constitution of India as the same is clearly beyond the competence of the State legislature. Accordingly, Section 10 C of the Act is declared to be ultra vires. The amount of tax deducted in the account of the petitioners is directed to be refunded forthwith.

(Paras 27 and 28)

G. R. Sethi, Advocate *for the petitioners* (in CWP Nos. 13852 of 2004, 17607, 17611, 17614, 17616 and 17617 of 2005)

K. L. Goyal and Sandeep Goyal, Advocates *for the petitioners* (in CWP No. 11902 of 2004)

Raman Sharma, Advocate, *for the petitioners* (in CWP Nos. 19579 of 2002, 1358, 1691, 2538 and 3131 of 2003)

Puneet Kansal, Advocate, *for the petitioners* (in CWP No. 15198 of 2004)

Vijay Kumar Chaudhary, Assistant Advocate General, Punjab.

Anil Rathee, Advocate for *the respondents*. (in CWP Nos. 19579 of 2002, 1691 of 2003 and 2538 of 2003)

RAJESH BINDAL J.

(1) This order will dispose of bunch of thirteen petitions bearing CWP Nos. 19579 of 2002, 1358, 1691, 2538 and 3131 of 2003, 11902, 13852 and 15198 of 2004, 17607, 17611, 17614, 17616 and 17617 of 2005. The primary challenge in the bunch of petitions is to the vires of Section 10 C of the Punjab General Sales Tax Act 1948 (for short, the 'Act').

FACTS :

C.W.P. No. 19579 of 2002 :

(2) The petitioner here is contractor working for various activities with Bharat Sanchar Nigam Limited. The petitioner besides filing the present petition challenging the vires of Section 10 C of the Act, also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending. The prayer is for declaring Section 10 C of the Act as ultravires to the Constitution of India and restraining the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioner.

C.W.P. No. 1358 of 2003 :

(3) The petitioners here are contractors working for various activities with Bharat Sanchar Nigam Limited. The petitioner besides filing the present petition challenging the vires of Section 10 C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending. The prayer is for declaring Section 10 C of the Act as ultravires to the Constitution of India and restraining the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioners.

C.W.P. No. 1691 of 2003 :

(4) The petitioners here are contractors working for various activities with Bharat Sanchar Nigam Limited. The petitioners besides

filing the present petition challenging the vires of Section 10 C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending. The prayer is for declaring Section 10 C of the Act as ultravires to the Constitution of India and restraining the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioners.

C.W.P. No. 2538 of 2003 :

(5) The petitioner here is contractor working for various activities with Bharat Sanchar Nigam Limited. The petitioners besides filing the present petition challenging the vires of Section 10 C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending. The prayer is for declaring Section 10 C of the Act as ultravires to the Constitution of India and restraining the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioner.

C.W.P. No. 3131 of 2003 :

(6) The petitioners here are contractor who was awarded various contracts by Municipal Corporation, Ludhiana, Punjab Urban Development Authority, Ludhiana, Improvement Trust, Ludhiana and Executive Engineer, Punjab PWD, B&R, Ludhiana. The petitioner besides filing the present petition challenging the vires of Section 10 C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending.

C.W.P. No. 11902 of 2004 :

(7) The petitioner is engaged in the execution of works contracts of civil nature. It is registered dealer under provisions of the Act. On 7th May, 2004, the petitioner was awarded a sub-contract by Bharat Heavy Electricals Limited for doing the work for M/s. Power grid Corporation of India Limited. The prayer is for declaring Section 10 C of the Act as ultravires to the Constitution of India and restraining

the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioner.

C.W.P. No. 13852 of 2004 :

(8) The petitioner is a society set up with the object of establishing schools, colleges, libraries, reading rooms for providing education to the children. It is running school in the name of Victoria International Public School at Village Mauli, Tehsil Phagwara, District Kapurthala. During the year 1999-2000 and 2000-2001 certain construction activity of class rooms etc. was undertaken by the petitioner in the school. A contractor in the name of M/s. Builtech Jalandhar was engaged, as the petitioner failed to deduct tax at source on the payments made to the contractor, notice under Section 10 C of the Act was issued to the petitioner. Rejecting the replies filed by the petitioner, assessment for the year 1999-2000 and 2000-2001 was framed,—vide orders dated 15th April, 2004, raising a demand of tax at the rate of 2% of the amount. Besides this penalty under Section 10 C(5) of the Act and interest under Section 10C(6) of the Act also levied. The petitioner besides filing the present petition challenging the vires of Section 10C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending.

C.W.P. No. 15198 of 2004 :

(9) The petitioner here is contractor working for various activities with Bharat Sanchar Nigam Limited. The petitioner besides filing the present petition challenging the vires of Section 10C of the Act also filed appeal before the appellate authority, who while accepting appeal remanded the case back to the assessing officer where the same is still pending. The prayer is for declaring Section 10C of the Act as ultravires to the Constitution of India and restraining the contractee from deducting the tax at source and for refund of the amount of tax already deducted from the bills of the petitioner.

C.W.P. No. 17607 of 2005 :

(10) The petitioner company was awarded two contracts bearing Nos. 331 and 333 by M/s. Power Grid Corporation of India Limited

for supply of electric transmission towers in knocked down condition. Another set of contracts bearing Nos. 332 and 334 were awarded for survey, optimization, design and construction of two 800 KV single circuit transmission lines from Kishanpura to Moga. The first set of contracts bearing Nos. 331 and 333 were purely for sale of material, the tower parts were manufactured and supplied by M/s. Kalpataru Power Transmission Limited, Gandhi Nagar, Ahemdabad and M/s Transpower Engineering Limited, Mumbai, whereas the second set of contracts bearing Nos. 332 and 334 were works contract, described as 'Erection Contracts'. The same were got executed through the sub-contractor M/s Mukand Engineering Limited. The dispute raised in the writ petition is pertaining to the assessment year 1997-98. M/s Power grid Corporation of India Limited for whom the petitioner was working deducted tax at source from the bills raised by the petitioner *qua* the works contracts and deposited the same with the State. During the year in question a sum of Rs. 27,00,933 was deducted at source. As the petitioner had also got the job executed through a sub-contractor, a deduction of 2% from the payment made to the sub-contractor was made and deposited with the Sales Tax Department. The certificates given to the petitioner by the Power Grid Corporation of India Limited on account of deduction at source on its behalf were submitted alongwith returns, however, at the time of framing of assessment of 24th April, 2002 the credit thereof was not given to the petitioner. In the assessment order the taxable turnover was determined as nil. The credit for the amount of tax deducted at source on behalf of the petitioner was not granted by the assessing authority. Aggrieved against the order of assessment the petitioner filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), who,—*vide* order dated 16th September, 2004 while accepting the appeal, remanded the case back to the assessing authority for verification of the TDS certificates and passing a self speaking order within 90 days from the receipt of remand order and in case refund is due the same be granted to the petitioner. As the remand order was not passed within the period prescribed, the petitioner took the matter to the Sales Tax Tribunal Punjab, who,—*vide* order dated 27th April, 2005 directed the assessing authority to decide the case within a period of one month. Though at the time of filing of the petition the proceedings were still pending before the assessing

authority, however, during the pendency thereof,—*vide* order dated 20th February, 2006 assessment was framed. By virtue of it a sum of Rs. 27,00,933 was found to be refundable to the petitioner. The prayer in the petition is for striking down provision of Section 10 C of the Act and also for grant of interest on the amount of tax retained by the official respondents without authority of law.

C.W.P. No. 17611 of 2005 :

(11) The petitioner company was awarded two contracts bearing Nos. 331 and 333 by M/s Power Grid Corporation of India Limited for supply of electric transmission towers in knocked down condition. Another set of contracts bearing Nos. 332 and 334 were awarded for survey, optimization, design and construction of two 800 KV single circuit transmission lines from Kishanpura to Moga. The first set of contracts bearing Nos. 331 and 333 were purely for sale of material, the tower parts were manufactured and supplied by M/s. Kalpataru Power Transmission Limited, Gandhi Nagar, Ahemdabad and M/s Transpower Engineering Limited, Mumbai, whereas the second set of contracts bearing Nos. 332 and 334 were works contract, described as 'Erection Contracts'. The same were got executed through the sub-contractor M/s Mukand Engineering Limited. The dispute raised in the writ petition is pertaining to the assessment year 2000-2001. M/s Power grid Corporation of India Limited for whom the petitioner was working deducted tax at source from the bills raised by the petitioner *qua* the works contracts and deposited the same with the State. During the year in question a sum of Rs. 12,80,387 was deducted at source. As the petitioner had also got the job executed through a sub-contractor, a deduction of 2% from the payment made to the sub-contractor was made and deposited with the Sales Tax Department. The certificates given to the petitioner by the Power Grid Corporation of India Limited on account of deduction at source on its behalf were submitted alongwith returns, however, at the time of framing of assessment of 28th May, 2002 the credit thereof was not given to the petitioner. In the assessment order the taxable turnover was determined as nil. The credit for the amount of tax deducted at source on behalf of the petitioner was not granted by the assessing authority. Aggrieved against the order of assessment the petitioner filed appeal before the Deputy Excise and

Taxation Commissioner (Appeals), who,—*vide* order dated 16th September, 2004 while accepting the appeal, remanded the case back to the assessing authority for verification of the TDS certificates and passing a self speaking order within 90 days from the receipt of remand order and in case refund is due the same be granted to the petitioner. As the remand order was not passed within the period prescribed, the petitioner took the matter to the Sales Tax Tribunal Punjab, who,—*vide* order dated 27th April, 2005 directed the assessing authority to decide the case within a period of one month. Though at the time of filing of the petition the proceedings were still pending before the assessing authority, however, during the pendency thereof,—*vide* order dated 20th February, 2006 assessment was framed. By virtue of it a sum of Rs. 12,80,387 was found to be refundable to the petitioner. The prayer in the petition is for striking down provision of Section 10C of the Act and also for grant of interest on the amount of tax retained by the official respondents without authority of law.

C.W.P. No. 17614 of 2005 :

(12) The petitioner company was awarded two contracts bearing Nos. 331 and 333 by M/s Power Grid Corporation of India Limited for supply of electric transmission towers in knocked down condition. Another set of contracts bearing Nos. 332 and 334 were awarded for survey, optimization, design and construction of two 800 KV single circuit transmission lines from Kishanpura to Moga. The first set of contracts bearing Nos. 331 and 333 were purely for sale of material, the tower parts were manufactured and supplied by M/s. Kalpataru Power Transmission Limited, Gandhi Nagar, Ahemdabad and M/s Transpower Engineering Limited, Mumbai, whereas the second set of contracts bearing Nos. 332 and 334 were works contract, described as 'Erection Contracts'. The same were got executed through the sub-contractor M/s Mukand Engineering Limited. The dispute raised in the writ petition is pertaining to the assessment year 2000-2001. M/s Power grid Corporation of India Limited for whom the petitioner was working deducted tax at source from the bills raised by the petitioner qua the works contracts and deposited the same with the State. During the year in question a sum of Rs. 2,55,308 was deducted at source. As the petitioner had also got the job executed through a sub-contractor, a

deduction of 2% from the payment made to the sub-contractor was made and deposited with the Sales Tax Department. The certificates given to the petitioner by the Power Grid Corporation of India Limited on account of deduction at source on its behalf were submitted alongwith returns, however, at the time of framing of assessment of 5th May, 2003 the credit thereof was not given to the petitioner. In the assessment order the taxable turnover was determined as nil. The credit for the amount of tax deducted at source on behalf of the petitioner was not granted by the assessing authority. Aggrieved against the order of assessment the petitioner filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), who,—*vide* order dated 16th September, 2004 while accepting the appeal, remanded the case back to the assessing authority for verification of the TDS certificates and passing a self speaking order within 90 days from the receipt of remand order and in case refund is due the same be granted to the petitioner. As the remand order was not passed within the period prescribed, the petitioner took the matter to the Sales Tax Tribunal Punjab, who,—*vide* order dated 27th April, 2005 directed the assessing authority to decide the case within a period of one month. Though at the time of filing of the petition the proceedings were still pending before the assessing authority, however, during the pendency thereof,—*vide* order dated 20th February, 2006 assessment was framed. By virtue of it a sum of Rs. 2,55,308 was found to be refundable to the petitioner. The prayer in the petition is for striking down provision of Section 10C of the Act and also for grant of interest on the amount of tax retained by the official respondents without authority of law.

C.W.P. No. 17616 of 2005 :

(13) The petitioner company was awarded two contracts bearing Nos. 331 and 333 by M/s. Power Grid Corporation of India Limited for supply of electric transmission towers in knocked down condition. Another set of contracts bearing Nos. 332 and 334 were awarded for survey, optimization, design and construction of two 800 KV single circuit transmission lines from Kishanpura to Moga. The first set of contracts bearing Nos. 331 and 333 were purely for sale of material, the tower parts were manufactured and supplied by M/s. Kalpataru

Power Transmission Limited, Gandhi Nagar, Ahemdabad and M/s Transpower Engineering Limited, Mumbai, whereas the second set of contracts bearing Nos. 332 and 334 were works contract, described as 'Erection Contracts'. The same were got executed through the sub-contractor M/s Mukand Engineering Limited. The dispute raised in the writ petition is pertaining to the assessment year 1999-2000. M/s Power grid Corporation of India Limited for whom the petitioner was working deducted tax at source from the bills raised by the petitioner qua the works contracts and deposited the same with the State. During the year in question a sum of Rs. 12,60,813 was deducted at source. As the petitioner had also got the job executed through a sub-contractor, a deduction of 2% from the payment made to the sub-contractor was made and deposited with the Sales Tax Department. The certificates given to the petitioner by the Power Grid Corporation of India Limited on account of deduction at source on its behalf were submitted alongwith returns, however, at the time of framing of assessment of 28th May, 2002 the credit thereof was not given to the petitioner. In the assessment order the taxable turnover was determined as nil. The credit for the amount of tax deducted at source on behalf of the petitioner was not granted by the assessing authority. Aggrieved against the order of assessment the petitioner filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), who,—*vide* order dated 16th September, 2004 while accepting the appeal, remanded the case back to the assessing authority for verification of the TDS certificates and passing a self speaking order within 90 days from the receipt of remand order and in case refund is due the same be granted to the petitioner. As the remand order was not passed within the period prescribed, the petitioner took the matter to the Sales Tax Tribunal Punjab, who,—*vide* order dated 27th April, 2005 directed the assessing authority to decide the case within a period of one month. Though at the time of filing of the petition the proceedings were still pending before the assessing authority, however, during the pendency thereof,—*vide* order dated 20th February, 2006 assessment was framed. By virtue of it a sum of Rs. 12,60,813 was found to be refundable to the petitioner. The prayer in the petition is for striking down provision of Section 10C of the Act and also for grant of interest on the amount of tax retained by the official respondents without authority of law.

C.W.P. No. 17617 of 2005 :

(14) The petitioner company was awarded two contracts bearing Nos. 331 and 333 by M/s. Power Grid Corporation of India Limited for supply of electric transmission towers in knocked down condition. Another set of contracts bearing Nos. 332 and 334 were awarded for survey, optimization, design and construction of two 800 KV single circuit transmission lines from Kishanpura to Moga. The first set of contracts bearing Nos. 331 and 333 were purely for sale of material, the tower parts were manufactured and supplied by M/s. Kalpataru Power Transmission Limited, Gandhi Nagar, Ahemdabad and M/s Transpower Engineering Limited, Mumbai, whereas the second set of contracts bearing Nos. 332 and 334 were works contract, described as 'Erection Contracts'. The same were got executed through the sub-contractor M/s Mukand Engineering Limited. The dispute raised in the writ petition is pertaining to the assessment year 1998-1999. M/s Power Grid Corporation of India Limited for whom the petitioner was working deducted tax at source from the bills raised by the petitioner *qua* the works contracts and deposited the same with the State. During the year in question a sum of Rs. 8,75,897 was deducted at source. As the petitioner had also got the job executed through a sub-contractor, a deduction of 2% from the payment made to the sub-contractor was made and deposited with the Sales Tax Department. The certificates given to the petitioner by the Power Grid Corporation of India Limited on account of deduction at source on its behalf were submitted alongwith returns, however, at the time of framing of assessment of 24th April, 2002 the credit thereof was not given to the petitioner. In the assessment order the taxable turnover was determined as nil. The credit for the amount of tax deducted at source on behalf of the petitioner was not granted by the assessing authority. Aggrieved against the order of assessment the petitioner filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), who *vide* order dated 16th September, 2004 while accepting the appeal, remanded the case back to the assessing authority for verification of the TDS certificates and passing a self speaking order within 90 days from the receipt of remand order and in case refund is due the same be granted to the petitioner. As the

remand order was not passed within the period prescribed, the petitioner took the matter to the Sales Tax Tribunal Punjab, who *vide* order dated 27th April, 2005 directed the assessing authority to decide the case within a period of one month. Though at the time of filing of the petition the proceedings were still pending before the assessing authority, however, during the pendency thereof *vide* order dated 20th February, 2006 assessment was framed. By virtue of it a sum of Rs. 8,75,897 was found to be refundable to the petitioner. The prayer in the petition is for striking down provision of Section 10C of the Act and also for grant of interest on the amount of tax retained by the official respondents without authority of law.

Legal Provisions :

(15) Article 286 of the Constitution of India contains provisions relating to the restrictions on the power of the State Legislature to impose taxes on the sale and purchase of goods. The same is reproduced hereunder :—

“286. Restrictions as to imposition of tax on the sale or purchase of goods :

- (1) No law of a State shall impose, or authorise 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 the goods into, or export of the goods out of, the territory of India.
- (2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).
- (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—
 - (a) a tax on the sale or purchase of goods declared by Parliament by law to be special importance in inter-State trade or commerce; or

- (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may be law specify.”

(16) Entry 54 of List II of the Seventh Schedule to the Constitution of India authorizes the State Legislature to enact law with respect to imposition of taxes on sale and purchase of goods other than newspapers. The power is subject to the provisions of Entry 92A in list I of the Seventh Schedule to the Constitution of India namely ‘Union List’. In **State of Madras versus M/s Gannon Dunkerley and Company (Madras) Limited (1)**, Hon’ble the Supreme Court opined that the expression ‘sale of goods’ in Entry 54 has the same meaning as provided in Sale of Goods Act, 1930. The State Legislature was, therefore, not competent to impose tax on the supply of material used in works contract treating them as sale under Entry 54 of the ‘State list’. To overcome the effect of the aforesaid judgment and to confer power on the state legislature to make law for imposition of tax on sale and purchase of goods involved in the execution of works contract, clause 29A was added in Article 366 of the Constitution of India by the Constitution (46th Amendment) Act, 1982. The amendment included amongst others, ‘a tax on the transfer of property in goods (whether as goods or in some other forms) involved in the execution of a works contract’ within the ambit of tax on sale and purchase of goods.

(17) As the challenge in the petitions is to the vires of Section 10C of the Act, it would be appropriate to extract the same, which is as under :

“10-C Tax deduction from the amount payable to works contractor :—

- (1) Notwithstanding anything contained in any of the provisions of this Act, every person responsible for

(1) AIR 1958 S.C. 560

making payment to any dealer (hereinafter in this section referred to as the contractor) for discharge of any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in any other form) in pursuance of a works contract shall, at the time of making such payment to the contractor either in cash or in any other manner, deduct an amount equal to two per centum of such sum towards part or, as the case may be, full satisfaction of the tax payable under this Act on account of such works contract.

- (2) Any contractor responsible for making any payment or discharge of any liability to any sub-contractor, or in pursuance of a contract with the sub-contractor, for the transfer of property in goods (whether as goods or in some other form) involved in the execution whether wholly or in part, of the work undertaken by the contractor, shall, at the time of such payment or discharge, in cash or by cheque or draft or by any other mode, deduct an amount equal to two per centum of such payment or discharge, purporting to be a part or full amount of the tax payable under this Act on such transfer from the bills or invoices raised by the sub-contractor as payable by the contractor.
- (3) The amount deducted under sub-section (1) or sub-section (2) shall be deposited into the Government Treasury by the person making such deduction in the manner prescribed.
- (4) Any deduction made in accordance with the provisions of the section and credited into the Government Treasury, shall be treated as payment of tax on behalf of the person from whose bills and invoices the deduction has been made and credit shall be given to him for the amount so deducted on the production of

certificate prescribed in this regard, in the assessment for the relevant assessment year.

- (5) If any such person as it referred to in sub-section (1) or sub-section (2), fails to make the deduction, or after deducting such amount fails to deposit the amount so deducted, the Assessing Authority may, after giving to such person an opportunity of being heard, by order, in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section but not so deducted and if deducted not so deposited in to the Government Treasury.
- (6) Without prejudice to the provision of sub-section (5), if any such person fails to make the deduction or, after deducting fails to deposit the amount so deducted, he shall be liable to pay simple interest at the rate of eighteen per centum per annum on the amount deductible under this Section but no so deducted, and, if deducted, not so deposited from the date on which such amount was deductible to the date on which such amount is actually deposited.
- (7) Where the amount has not been deposed after deduction, such amount together with interest referred to in sub-section (6) shall be a charge upon all the assets of the person concerned.
- (8) Payment by way of deduction in accordance with sub-section (1) or sub-section (2) shall be without prejudice to any other mode or recovery of tax due under this Act from the contractor or sub-contractor, as the case may be.

Explanation.—For the purpose of this section, Assessing Authority shall be construed such authority having jurisdiction over the place where the business or residence of the person making deduction of tax is located.”

Arguments :

(18) Leading the arguments on behalf of the petitioners Mr. G. R. Sethi, learned counsel for the petitioners submitted that in the execution of various works contract granted to the petitioners, either major component is of labour or majority of the goods involved in the execution of works contract have been imported from other States and even from other countries or the same are not taxable as such under the Act. The State legislature as such is not authorised to levy taxes on the transaction which it is not competent to legislate. Once the tax itself is not leviable under the provisions of the Act, merely because the same is refundable or is refunded to the persons later on will not result in levy being valid at the first instance. In spite of the fact that a person may not be ultimately liable to pay a tax on transaction, a deduction on his behalf is required to be made at the first instance. In some cases, for certain valid reasons a contractor may not be even liable to be registered under the provisions of the Act but still in case he is involved in execution of works contract a deduction is required to be made on his behalf and amount paid into the Treasury. The Contractor could get the refund thereof only after filing returns and getting the assessment framed which is possible only after such a contractor gets himself registered. This is nothing else but unnecessary harassment and recovery of tax which is in complete violation of Article 265 of the Constitution of India, besides beyond the legislative competence of the State. To buttress the arguments, learned counsel for the petitioners relied upon judgments of Hon'ble the Supreme Court in **(Steel Authority of India Limited versus State of Orissa and others) (2)**, and **(Nathpa Jhakri Joint Venture versus State of Himachal Pradesh and others) (3)**, where similar provisions under the Orissa Sales Tax Act, 1947 and Himachal Pradesh General Sales Tax Act, 1968, respectively were struck down by Hon'ble the Supreme Court. Further reliance is upon judgment of Patna High Court in **Larsen and Toubro Limited and others versus State of Bihar and others (4)**,

(2) (2000) 118 STC 297

(3) (2000) 118 S.T.C. 306

(4) (2000) 117 STC 41

Gujarat High Court in **Larsen and Toubro Limited and others versus Commissioner of Sales Tax (5)**, Karnataka High Court in **Larsen and Toubro Limited and others versus State of Karnataka and others (6)**, and Jharkhand High Court in **Larsen and Toubro Limited and others versus State of Jharkhand and others (7)**, where also various High Courts have struck down similar provisions providing for deduction of tax at source in the case of works contracts.

Discussions :

(19) In **Steel Authority of India Limited's** case (*supra*) the issue under consideration before Hon'ble the Supreme Court was challenge to the vires of Section 13AA of Orissa Sales Tax Act, 1947 (for short 'the Orissa Act'). Section was initially inserted with effect from 28th April, 1993, however, after the same was struck down by Orissa High Court in the case of **Brajendra Mishra versus State of Orissa (8)**, it was replaced on 4th October, 1993 with certain amendments. Section 13AA of the Orissa Act as stood after amendment and under consideration before Hon'ble the Supreme Court, read as under :—

“13AA Deduction of tax at source from the payment to works contractors—

- (1) Notwithstanding anything contained in section 13 or any other law or contract to the contrary, any person responsible for paying any sum to any contractor (hereinafter referred to in this section as the 'deducting authority') for carrying out any works contract, which involves transfer of property in goods, in pursuance of a contract between the contractor and—
- (a) Central Government or any State Government, or
 - (b) any local authority, or
 - (c) any authority or corporation established by or under a statute, or

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- (5) (2001) 124 STC 162
 (6) (2003) 129 STC 401
 (7) (2005) 140 STC 134
 (8) (1994) 92 S.T.C. 17

- (d) any company incorporated under the Companies Act, 1956 (1 of 1956) including any State or Central Government undertaking, or
- (e) any co-operative society or any other association registered under the Societies Registration Act. 1860 (21 of 1860).

shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct an amount towards sales tax equal to four per cent of such sum in respect of the works contract. if the value of the work contract exceeds rupees one lakh.

XXX XXX XXX

- (5)(a) Where, on an application being made by the contractor in this behalf, the Commissioner is satisfied that any works contract of the nature referred to in sub-section (1) involves both transfer of property in goods and labour or service, or involves only labour or service and, accordingly, justifies deduction of tax on a part of the sum in respect of the works contract or, as the case may be, justifies no deduction of tax, he shall, after giving the contractor a reasonable opportunity of being heard, grant him such certificate as may be appropriate, in the manner prescribed.

Provided that nothing in the said certificate shall affect the assessment of the sales tax liability of the contractor under this Act.

- (b) Where such a certificate is produced by a contractor before the deducting authority, until such certificate is cancelled by the Commissioner, the deducting authority shall either make no deduction of tax or make the deduction of tax as

the case may be, in accordance with the said certificate.”

(20) While dealing with the challenge to the vires of the provision, Hon'ble the Supreme Court in **Steel Authority of India Limited's case** (supra) opined that the Section was beyond the competence of State Legislature and accordingly the same was struck down. The relevant paras from the judgment are extracted below :

- “12. In **Bhawani Cotton Mills Ltd. versus State of Punjab** [1967] 20 STC 290 (SC); [1967]3 SCR 577, this Court said “if a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid; because, if particular sales and purchases are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax”.
13. There can be no doubt, upon a plain interpretation of section 13-AA, that it is enacted for the purposes of deduction at source of the State sales tax that is payable by a contractor on the value of works contract. For the purposes of the deduction neither the owner nor the Commissioner who issues to the contractor a certificate under section 13-AA (5) is entitled to take into account the fact that the works contract involves transfer of property in good consequent upon of an inter-state sale, an outside sale or a sale in the course of import. The owner is required by section 13-AA(1) to deposit towards the contractor's liability to State sales tax four per cent of such amount as he credits or pays to the contractor, regardless of the fact that the value of the works contract includes the value of inter-state sales, outside sales or sales in the course of import. There is, in our view, therefore, no doubt that the provisions of section 13-AA are beyond the powers of the State Legislature for the State Legislature may make no law levying sales tax on inter-state sales, outside sales or sales in the course of import.”

(21) In **Nathpa Jhakri Joint Venture's case** (*supra*) the challenge was to the vires of Section 12-A of the Himachal Pradesh General Sales Tax Act, 1968 which reads as under :

"12.A Tax deduction from the bills/invoices of the works contractors :—

- (1) Notwithstanding anything to the contrary contained in section 13, every person making any payment or discharge of any liability on account of valuable consideration payable for the transfer of property in goods, whether as goods or in some other form, involved in the execution of works contract shall deduct an amount not exceeding four per centum, as may be prescribed, purporting to be a part or full of the tax payable on such sales, from the bills or invoices raised by the works contractors as payable by the person :

Provided that no such payment or discharge of any bill raised by the works contractors shall be made without deduction :

Provided further that if the State Government is satisfied that it is necessary to do so in the interest of the State revenue, it may notify the names/posts of such persons who shall be competent persons to make such deductions."

(22) While dealing with the issue and relying upon the judgment in **Steel Authority of India's case** (*supra*), Hon'ble the Supreme Court struck down Section 12 A of the Himachal Act opining it to be beyond the competence of State Legislature and directed for refund the amount collected by the State. The relevant paras thereof are extracted below :

- "4. A bare perusal of the two provisions will make it clear that in either provision there is an obligation to deduct from transactions relating to works contract on bills or invoices raised by the works contractor an amount not exceeding 4 per cent or 2 per cent, as the case may be. Though the object

of the provision is to meet the tax in respect of the transactions on all works contract on the valuable consideration payable for the transfer of property in goods involved in the execution of the works contract, the effect of the provision is that, irrespective of whether the sales are inter-state sales or outside sales or export sales which are outside the purview of the State Act and those transactions in respect of which no tax can be levied even in terms of the enactment itself, such deductions have to be made in the bills or invoices of the contractors. To say that if a person is not liable for payment of tax inasmuch as on completion of the assessment refund can be obtained at a later stage is no solace, as noticed in *Bhawani Cotton Mills Ltd. versus State of Punjab* [1967] 20 STC 290 (SC); [1967]3 SCR 577. Further, there is no provision for certification of the extent of the deduction that can be made by the authority. Therefore, we must hold that arbitrary and uncanalised powers have been conferred on the concerned person to deduct up to 4 per cent from the sum payable to the works contractor irrespective whether ultimately the transaction is liable for payment to any sales tax at all. In that view of the matter, we have no hesitation in rejecting the contention advanced on behalf of the State.

5. The learned counsel drew our attention to the decision in a case arising under the Bihar Sales Tax Act and the earlier decision under the Orissa Sales Tax Act, but in view of the decision of this Court in *Steel Authority of India* [2000] 118 STC 297; (2000)2 SCALE 98, it is wholly unnecessary to refer to the same. Following the decision in *Steel Authority of India* case [2000] 118 STC 297(SC), (2000)2 SCALE 98(SC), we allow this appeal and set aside the order made by the High Court by allowing the writ petition and quashing the aforesaid provisions as being beyond the purview of the Himachal Pradesh State Legislature. Such amount as has been collected from the appellant under the provisions of Section 12-A read with rule 31-A shall forthwith be refunded by the State. If any amount has been deposited in any bank pursuant to orders passed by this

Court or the High Court, it shall be refunded to the appellant with interest accruing thereon. In the circumstances of the case, there shall be no orders as to costs.”

(23) In **V.T.P. Construction versus State of Chhattisgarh and others (9)**, the Chhattisgarh High Court while following judgments of Hon’ble the Supreme Court rendered in **Steel Authority of India Limited and Nathpa Jhakri Joint Venture’s case (supra)**, struck down Section 35 of the Chhattisgarh Vanijyik Kar Adhiniyam, 1994 requiring deduction of tax at source. The aforesaid judgment of Chhattisgarh High Court was upheld by Hon’ble the Supreme Court in **State of Chhattisgarh and others versus V.T.P. Constructions (10)**.

(24) In **Larsen and Toubro Limited’s case (supra)** the challenge was to the vires of Section 25-A of the Bihar Finance Act, 1981 which provided for deduction of tax at source out of any amount payable in respect of transfer of property in goods involved in execution of works contract. A Division Bench of Patna High Court, finding the provision to be beyond the competence of State Legislature struck down the same to the extent it related to transfer of property in goods taking place in the course of inter-state trade or commerce or a sale outside the State or in the course of import within the ambit of Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 or ‘declared goods’ within the meaning of Sections 14 and 15 of the said Act.

(25) Before Gujarat High Court as well in **Larson and Toubro Limited’s case (supra)**, the challenge was to the vires of Section 57B of the Gujarat Sales Tax Act, 1969, providing for deduction of tax on the payment made to a contractor for carrying out any work in pursuance of a specified works contract. Following the judgment of Hon’ble the Supreme Court in **Steel Authority of India Limited’s case supra** the provision was struck down and a direction was issued for refund of the amount already deducted.

(26) Before Karnataka High Court in **Larson and Toubro Limited’s case (supra)**, also the challenge was to the vires of Section 19A of the Karnataka Sales Tax Act, 1957 providing of deduction of

(9) (2006) 145 S.T.C. 185

(10) (2008) 10 Revenue Cases 179

tax for similar transactions. The Karnataka High Court as well following judgment in **Steel Authority of India Limited's** case (supra) and **Nathpa Jhakri Joint venture's** case (supra) struck down the provision opining the same to be beyond the purview of the State legislature. To similar effect is the judgment of Jharkhand High Court again in the case of **Larson and Toubro Limited's** case (supra).

(27) If the enunciation of law as referred to above is considered in the fact and circumstances of the present case, the inescapable conclusion is that the provisions of Section 10C of the Act which are para materia to the provisions, which were struck down by Hon'ble the Supreme Court and various High Courts, have to be declared ultra vires to the Constitution of India as the same is clearly beyond the competence of the State legislature.

(28) Accordingly, Section 10C of the Punjab General Sales Tax Act, 1948 is declared to be ultra vires. The amount of tax deducted in the account of the petitioners is directed to be refunded forthwith.

R.N.R.

Before Hemant Gupta & Rajesh Bindal, JJ.

M/S STELCO STRIPS LTD.,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 14885 of 2004

22nd August, 2008

Constitution of India, 1950—Art. 226—Punjab General Sales Tax Act, 1948—S.14-B(7)(ii)(iii)—Detention of goods and vehicle—Petitioner submitting his explanation—Competent authority taking no final decision for about a year—Time limit of 14 days prescribed for Officer to complete quasi—judicial proceedings—Whether provisions of S.14-B(7)(ii) and (iii) that proceedings shall be decided within a period of 14 days from commencement of enquiry proceedings are directory or mandatory—Officer entrusted with duty of adjudication may have certain limitations to decide such