IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.2.2020

Delivered on : 9.3.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.A.Nos.3403, 3413, 3414 and 2812 of 2019
and
C.M.P.Nos.21904, 21951, 21958 and 17970 of 2019

W.A.Nos.3403, 3413 & 3414/2019

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai 600 005.

2. The Additional Commissioner (CT),
   Large Tax Payer's Unit,
   5th Floor, Dugar towers,
   No.34, Marshalls Road,
   Egmore, Chennai 600 008. Appellants

Versus

The Ramco Cements Ltd.
rep. by its General Manager-Legal
Thiru.T.Mathivanan,
Auras Corporate Centre, V Floor,
98-A, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. Respondent

Prayer: Writ Appeal Nos.3403, 3413 & 3414 of 2019 filed under Clause 15 of the Letters Patent against the order dated 26.10.2018 in W.P.Nos.19459, 19458, 19460 and of 2018 passed by this court.

W.A.No.2812 of 2019

1. The State Tax Officer,
   Thiruvallikeni Assessment Circle,
   Greenways Road, Chennai 600 028.

2. The Joint Commissioner (CS)
   (Systems),
   PAPJM Buildings,
   No.1, Greams Road,
   Chennai 600 006. Appellants

v.

Sundaram Fasteners Limited,
rep. by its President Finance,
S.Meenakshisundaram,
98-A, Dr.Radhakrishnan Salai,
Mylapore, Chennai 600 004. Respondent

Prayer: Writ Appeal No.2812 of 2019 filed under Clause 15 of the Letters Patent against the order dated 13.6.2019 in W.P.No.16221 of 2019 passed by this court.

For Appellants in all cases : Mr.Mohammed Shaffiq, Special Government Pleader

For Respondent in W.A.Nos.3403, 3413 & 3414 of 2019 : Mr.R.L.Ramani, Senior Counsel for Mr.B.Ravindran

For Respondent in W.A.No.2812/2019 : Mr.N.Prasad for Mr.Inbarajan

COMMON JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Commissioner of Commercial Taxes has filed this intra-court Writ Appeals aggrieved by the order and Judgment of the learned Single Judge dated **26.10.2018**, whereby the learned Single Judge allowed the Writ Petitions filed by the Assessees, M/s.Ramco Cements Limited and another and quashed the impugned communication dated **31st May 2018** issued by the Commissioner of Commercial Taxes, Chepauk, Chennai and consequential Notices issued to the Assessees seeking to deny the benefit of purchases of HSD Diesel, Natural Gas in the course of inter-State Trade or Commerce against the Declaration of 'C' forms of the CST Act, 1956 at the concessional rate of 2%.

2. The Revenue also contends that had such HSD Diesel been purchased within the State of Tamil Nadu locally, the rate of tax at 28% would have been levied and it would not have resulted in a big financial loss to the State of Tamil Nadu.

3. The bone contention of the Revenue in the present Writ Appeal is that with the enactment of the Constitutional 101st Amendment and consequential GST Laws enacted in all the States with effect from **1.7.2017** and the consequential amendments effected in

the CST Act, 1956 also and amendment in the definition of 'Goods' restricting the operation of CST Act for only six commodities like Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor, the Assessee Company or whoever engaged in the manufacture of Cement and other things, which were now covered by the GST Laws were not entitled to purchase such Diesel, etc. these six specified goods against the Declaration Form 'C' at the concessional rate on the inter-State purchases of such goods made by them and therefore, the learned Single Judge has erred in quashing the said Circular issued by the Commissioner of Commercial Taxes on **31.5.2018** prohibiting these dealers and manufacturers of Cement, etc. from downloading Online Declaration of Form 'C' from the Official Website of the Department was justified.

4. The Assessees had approached the learned Single Judge against the aforesaid stand of the Revenue Department and the said communication dated 31.5.2018 and they succeeded before the learned Single Judge and aggrieved by the said Judgment and order of the learned Single Judge, the Revenue has come up before us in these Writ Appeals.

5. Various contentions were raised by Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the Revenue Department, which were equally and vehemently opposed by Mr.R.L.Ramani, learned Senior Counsel and Mr.N.Prasad appearing on behalf of the Assessee Companies.

6. In brief, the contentions on behalf of the Revenue Department may be summarized thus:-

a) That with the new Indirect Taxes Regime introduced in all the States of the country with effect from **1.7.2017** in the form of Goods and Services Tax Law (for short 'GST') in pursuance of the Constitutional 101st Amendment Act, 2016 and consequential Amendments in the CST Act, 1956 and the State Sales Tax Act and VAT Laws restricted only the six specified goods, the Dealers and Manufacturers of Goods other than six specified commodities to which, the GST Law does not extend like Petrol, Diesel, Liquor, etc., the registration of such Dealers dealing in other goods was liable to be cancelled and they could not be treated as Dealers 'liable to pay tax' under Section 7 of the CST Act, 1956 after 1.7.2017 and in the absence of such inability of these Dealers like the Respondent/Assessees to get registered under the CST Act, 1956 they

would not be entitled to purchase these six commodities at concessional rate against the Declaration in Form 'C' in terms of Section 8(3)(b) of the CST Act, 1956, in the course of inter-State Trade or Commerce.

(b) That even though the old Registration Certificates of those Dealers under CST Act were not so far cancelled and they included the Diesel, Petrol, etc. as commodities to be purchased by them in the manufacture of other goods like cement etc., but, the Registration Certificates should be deemed to be, *pro tanto*, amended by the force of enactment of new Laws and in the absence of their eligibility to get registered under the CST Act in terms of Section 7(1) of the Act, they could not be permitted under Section 8(3)(b) of the Act to avail the benefit of concessional rate of tax on such purchases of Petrol, Diesel, etc. for use in manufacture by them of other goods like Cement etc., which are administered and subjected to levy of tax under the new GST Law and since the GST Law does not make any such provision for concessional rate of tax against the Declaration of 'C' forms, such Dealers like the Respondent/Assessees cannot be allowed to make use of Declaration in Form 'C'.

(c) That the learned Commissioner was justified in issuing the

impugned communication to all the Joint Commissioners on **31st May 2018** making the correct interpretation of the position of law after 1.7.2017 allowing the use of Declaration form "C", by the first four categories of the Dealers who dealt with the such six specified commodities only like major Oil Companies viz., IOC BPCL, HPCL etc., major Distilleries like TASMAC, Golden Vats, SNJ Distilleries, major Hotels like ITC, Crown Plaza, Oriental Hotels, etc. and major Clubs and Resorts and Cultural Associations like Presidency Club, Madras Boat Club, etc., who can buy one or more of those six commodities and sell it. However, the excluded category of the Dealers like Cement Industries and Spinning Mills, Tamil Nadu Power Company, Mines and Nuclear Power Corporation etc., for whom the levy of tax is now provided under the new GST Law, which was in operation with effect from **1.7.2017** and they were not so entitled to continue to purchase the aforesaid six commodities at the concessional rate against Form 'C' Declarations, therefore, the said bifurcation and classification of the Dealers by the Commissioner was justified and the proceedings initiated by the Joint Commissioners accordingly against the Respondent/Assessees and other similarly situated persons were also justified.

7. ***Per contra***, the learned counsel for the Assessee submitted that:-

(a) The controversy was no longer *res integra* and has been decided in favour of the Assessee atleast by seven High Courts like Punjab & Haryana High Court, Rajasthan High Court, Jharkhand High Court, etc. and one of the Judgments in similar circumstances of Punjab and Haryana High Court in the case of ***Carpo Power Limited vs. State of Haryana*** *in (CWP.No.29437 of 2017* decided on 28.3.2018) **((2018) 53 GSTR 24 (P&H))** had already been affirmed by the Hon'ble Supreme Court with the dismissal of the **SLP No.20572 of 2018 on 13.8.2018** and therefore, there was no merit in the present Writ Appeals filed by the Revenue and the same deserves to be dismissed.

(b) The learned counsel for the Assessee contend that not only the Registered Certificate granted in favour of the Respondent/Assessees continue even after 1.7.2017 without any modification thereof and therefore, the Revenue Department was estopped from denying the said benefit of purchase of six commodities at concessional rate against the Declaration in 'C' form, but, the contention of the Revenue that the Assessees were not entitled to get

themselves registered under CST Act after **1.7.2017** was wholly erroneous inasmuch as such entitlement of the Assessee Companies was available to them under Section 7(2) of the CST Act 1956 and irrespective of them being not 'liable to pay tax' under the provisions of Section 7(1) of the CST Act, as they were not selling those six commodities in the course of inter-State Trade or Commerce but, nonetheless their right to hold the registration under CST Act independently exists and their right to purchase any of those six commodities at concessional rate also equally continues.

(c) The learned counsel urged that if the operatability of the CST Act was restricted only to the specified six commodities inasmuch as the Sellers of those six commodities was concerned, the right of purchase in the course of inter State Trade or Commerce of any of these six commodities could not be defeated by the Revenue and there is no question of *pro tanto* amendment of Registration Certificates of the Assessees, as they are entitled to purchase these goods and their right has not been taken away, even by the enactment of GST Law with effect from **1.7.2017**. Consequently, the Revenue Department has taken a wholly misconceived stand in the form of the Circular issued to the Joint Commissioners on **31.5.2018** so as to deny the

said benefit to the Assessees.

(d) The learned counsel for the Assessee reiterated before this court that the impugned Circular has been issued by the learned Commissioner of Commercial Taxes on **31.5.2018** which causes serious prejudice to the Assessees like the Respondent/Assessees, without giving any opportunity of hearing to the Assessees and the same is also without jurisdiction as the law under Section 48-A of the TNVAT Act, 2006 does not confer any such power upon the Commissioner to interpret the law according to his wisdom and enforce the same according to his wishes throughout the State. The said exercise could not have been undertaken by the learned Commissioner and therefore, the impugned Circular dated **31.5.2018** has been rightly set aside by the learned Single Judge and consequently, the Notices issued to the Assessees also deserves to be quashed. They emphasised particularly the following impugned part of the Circular dated **31.5.2018** issued by the Commissioner giving different categorisation of the Dealers, which is violative of Article 14 of the Constitution of India. The said Circular dated **31.5.2018** of the Commissioner is quoted below in extenso:-

"COMMERCIAL TAXES DEPARTMENT

From *To*

***Dr.T.V.Somanathan,I.A.S**., All Joint Commissioners*
Commissioner of *(Territorial)*
Commercial Taxes,
Chepauk,
Chennai 600 005.

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*Letter No.CC4/678/2012 dated **31st May 2018***

Sir/Madam,

*Sub: Commercial Taxes Department - Computerisation - **Generation of 'C' Forms - Certain instructions** - Regarding.*

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*Even after implementation of Goods and Services Tax from July 2017, **Tamil Nadu Value Added Tax continues to be administered by the Department in respect of six goods viz., Petroleum Crude, High Speed Diesel, Motor Spirit (Petrol), Aviation Turbine Fuel, Natural Gas and Liquor as these are outside the purview of GST**. The definition clause of Goods in section 2(d)*

*of **CST Act** has been amended suitably incorporating the **above six goods only** and therefore all the **dealers who are not dealing in those goods** are not permitted to make use of benefits provided under the CST Act, 1956. **Accordingly, any dealer who deals in the above goods, i.e., who effect purchase and sales and those who effect purchases of those goods and manufactures those goods are alone eligible to be assessed under the CST Act 1956** and they are mandated to file returns under CST Act 1956 in respect of inter-State transactions **and also under TNVAT Act 2006** in respect of intra-State transactions.*

*From the above, it is thus made clear that **any dealer who deals in those six goods are alone entitled to effect purchases from other State** by availing the concessional rate of tax. In other words, those dealers who are not dealing in those goods are **not eligible to purchase those six goods at the concessional rate** of tax at 2% by issue of C form*

declarations as they are trading or manufacturing those goods that are administered under GST act 2017.

It is learnt from reliable sources *that certain dealers who are not dealing in those goods are effecting purchase of those six goods and effecting sales and also using it indirectly for the manufacturing process for which they are not entitled. For example, certain manufacturing units are effecting* ***purchases of HSD and using it for generation of power out of which they manufacture finished goods*** *that are and administered under* ***GST Act 2017****. In certain cases, the dealers are effecting purchases of petroleum products from other States and effect local sales and are not paying appropriate tax. Perusal of the data relating to generation of C forms pertaining to the quarter January 2018 to March 2018 revealed the* ***following categories of dealers involved****:-*

1. ***Major Oil Companies*** *that included IOC, BPCL, HPCL, shell, Reliance Industries, ONGC.*

*2. **Major Distilleries** that included Golden Vats, SNJ Distilleries and TASMAC.*

*3. **Major Hotels** that included ITC, Oriental Hotels, Crown Plaza, GRT Hotels, SAS Hotels Enterprises, TAJ GVK Hotels, Hablis Hotels, etc.*

*4. **Major Clubs, Resorts, Cultural Associations** that included Presidency Club, Madras Boat Club, Madras Gymkhana Club, Ootacamund Club, Andhra Social Cultural Association, Ideal Beach Resorts, etc.*

*5. **Other Dealers not related to the above category** being Spinning Mills, Blue Metal Crusher Unit, ILFS Tamil Nadu Power Company, Housing Promoters, **Cement Companies (Ramco Cement), Mines, Nuclear Power Corporation**, etc.*

*The dealers mentioned in the serial number **1 to 4 are entitled to purchase petroleum products and Alcoholic Liquors** as they are **dealers** in those six commodities. The dealers mentioned in **serial number 5 are not entitled** to purchase petroleum products **as the goods manufactured are being***

***taxed under GST**. This appears to have resulted in **large loss of revenue** from July 2017 till date **as these dealers should have effected purchases locally by paying higher rate of tax**. The analysis made is only with reference to the transaction period from January 2018 and March 2018. Similar exercise has to be carried out for the previous period and this **should be monitored in future** unless/until those six goods are brought within the purview of GST.*

It is also brought to the notice of this office that certain authorized dealers of major Oil Companies may be effecting purchase of petroleum products by issue of C forms and effect local sales and may not be paying tax on their first sale inside the State of Tamil Nadu as per the rate specified in the Second Schedule to TNVAT Act 2006. This may have become more prevalent in the circumstances of rising prices of petroleum products.

*In order to **plug the leakage of revenue due to the State in respect of Non-GST goods, it***

becomes essential to ensure that

(i) all the registered dealers who have migrated to GST are not misusing the C form declaration for the purpose of effecting purchase of Petroleum products and using it for manufacture of other goods that are administered under GST Act 2017 and

(ii) Authorized dealers of major Oil Companies make payment of first Sale Tax at the rate specified in the Second Schedule to TNVAT Act 2006.

Hence, all the Joint Commissioners (Territorial) are requested to issue necessary instructions to all the assessing officers to take necessary action against:

1. Those dealers who use the declaration form C for purchase of those six goods at concessional rate and not paying tax on the sales by making proper assessment under Section 22(4) of TNVAT Act 2006

2. ***Those dealers who have migrated to GST and not entitled to purchase those six goods as per Section 8(2)*** *and Section 2(d) of CST Act 1956 by initiating action under Section* ***10-A*** *for the offence*

*committed under section **10-a** of CST Act 1956.*

*All the Joint Commissioners (Territorial) are also requested to issue necessary instruction to the assessing officers concerned that wherever approval is required for generation of C forms, they should be approved **after verifying the eligibility of issue of those declaration in order to protect against loss of revenue to the State**.*

The receipt of this letter has to be acknowledged by all the Joint Commissioners by return of mail.

Sd. xxxx
31/05/18
For Commissioner of Commercial Taxes"

8. Both the learned counsel relied on the Case Laws also which would be dealt with by us a while later.

9. Having heard the rival submissions and upon careful reading of the relevant provisions of law and the scheme of the various enactments including the introduction of new GST Regime with effect from **1.7.2017** and the case laws cited at the Bar, we are of the

considered opinion that there is no merit in the present Writ Appeals filed by the State and respectfully agreeing with the view taken by the various other High Courts and affirming the view of the learned Single Judge, we are inclined to dismiss the present Writ Appeals filed by the Revenue Department for the following reasons.

10. The first and foremost contention raised on behalf of the Appellant/State that since the Respondents/Assessees have lost their entitlement to be registered under the provisions of the CST Act 1956 and the consequential changes in the Statute, they no longer remain as Dealer 'liable to pay' tax under the CST Act, as they do not sell any of the six specified commodities like Fuel, Diesel, etc., is misconceived. The provisions of Section 7 of the CST Act are quoted below for ready reference-

> *"**7. Registration of dealers--** (1) Every dealer **liable to pay tax under this Act shall**, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify, and even such application shall contain such*

particulars as may be prescribed.

(2) Any dealer liable to pay tax under the sales tax law of the appropriate State, ***or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part****, as the case may be, may,* ***notwithstanding that he is not liable to pay tax under this Act****, apply for registration under this Act to the authority referred to in subsection (1), and every such application shall contain such particulars as may be prescribed.*

Explanation *— For the purposes of this sub-section,* ***a dealer shall be deemed to be liable to pay tax*** *under the sales tax law of the appropriate State* ***notwithstanding that under such law a sale or purchase made by him is exempt from tax*** *or a refund or rebate of tax is admissible in respect thereof.*

(2-A) Where it appears necessary to the authority to

whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realisation of the tax payable under this Act or for the proper custody and use of the Forms referred to in clause (a) of the first proviso to subsection (2) of section 6 or subsection (1) of section 6-A or sub-section (4) of section 8, he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a Certificate of Registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.

(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder [and the condition, if any, imposed under sub-section (2-A), has been complied with, ***he shall register the applicant*** *and grant to him a certificate of*

registration in the prescribed form which shall specify the class or classes of goods for the purposes of sub-section (1) of section 8.

(3-A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in subsection (3-A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner ***such security****, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or subsection (2-A),* ***such additional security****, as may be specified in the order, for all or any of the aforesaid purposes.*

(3-B) No dealer shall be required to furnish any security and sub-section (2-A) or any security or

additional security under sub-section (3-A) unless he has been given an opportunity of being heard.

(3-BB) The amount of security which a dealer may be required to furnish under sub-section (2-A) or subsection (3-A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3-A), by the authority referred to therein shall not exceed—

(a) in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum ***equal to the tax payable under this Act****, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished; and*

(b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal

to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter- State trade or commerce in the year in which such security or, as the case may be additional security is required to be furnished, had such dealer been not registered under this Act.

(3-C) Where the security furnished by a dealer under sub-section (2-A) or sub-section (3-A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3-D) The authority granting the certificate of registration may by order and for good and sufficient cause ***forfeit the whole or any part of the***

security *furnished by a dealer,—*

(a) for realising any amount of tax or penalty payable by the dealer;

(b) if the dealer is found to have ***misused any of the forms****: referred to in sub-section (2-A) to have failed to keep them in proper custody:*

Provided that no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3-E) Where by reason of an order under sub-section (3-D), the security furnished by any dealer is rendered insufficient, he shall make up the deficiency is such manner and within such time as may be prescribed.

(3-F) The authority issuing the forms referred to in sub-section (2-A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3-A), or with the provisions of sub-section (3-C) or sub-section (3-E), until the dealer has complied with such

order or such provisions, as the case may be.

(3-G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.

(3-H) Any person aggrieved by an order passed under sub-section (2-A), subsection (3-A), sub-section (3-D) or sub-section (3-G) may, within thirty days of the service of the order on him, but after furnishing the security, prefer, in such form and manner as may be prescribed, an appeal against such order to such authority (hereinafter this section referred to as the "appellate authority") as may be prescribed:

Provided that the appellate authority may, for sufficient cause, permit such person to present the appeal--

(a) after the expiry of the said period of thirty

days; or

(b) without furnishing the whole or any part of such security.

(3-I) The procedure to be followed in hearing any appeal under sub-section (3-H), and the fees payable in respect of such appeals shall be such as may be prescribed.

(3-J) The order passed by the appellate authority in any appeal under subsection (3-H) shall be final.

(4) ***A certificate of registration*** *granted under this section may —*

(a) either on the application of the dealer to whom it has been granted or, where no such application has been made, after due notice to the dealer, ***be amended by the authority*** *granting it if he is satisfied that by reason of the registered dealer* ***having changed the name, place or nature of his business*** *or the class or classes of goods in which he carries on business or for any*

other reason the certificate of registration granted to him requires to be amended; or

(b) ***be cancelled by the authority*** *granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that* ***he has ceased to carry on business or has ceased to exist*** *or* ***has failed without sufficient cause****, to comply with an order under subsection (3-A) or with the provisions of sub-section (3-C) or sub-section (3-E) or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered under sub-section (2)* ***has ceased to be liable to pay tax under the sales tax law of the appropriate State*** *or for any other sufficient reason.*

(5) A registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate of registration for the cancellation of such registration, and the authority shall, ***unless the dealer is liable to pay tax under this Act, cancel***

***the registration accordingly**, and where he does so, the cancellation shall take effect from the end of the year."*

11. A careful reading of the provisions will make it clear that registration only under Section 7(1) of CST Act depends upon the 'liability to pay tax', which arises under Section 6 of the Act, which is also quoted below for ready reference:-

*"**6. Liability to tax on inter-State sales.—***

*(1) Subject to the other provisions contained in this Act, **every dealer** shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, **be liable to pay tax under this Act on all sales of goods other than electrical energy** effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:*

*Provided that a dealer **shall not be liable to pay tax** under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of*

section 5 is a ***sale in the course of export*** *of those goods out of the territory of India.*

(1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce ***notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sales tax law of the appropriate State*** *if that sale had taken place inside that State.*

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any ***subsequent sale during such movement effected by a transfer of documents of title to such goods*** *to a registered dealer, if the goods are*

of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this subsection unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made to a registered dealer, a declaration referred to in subsection (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if,—

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State ***exempt from tax generally or is subject to tax generally at a rate which is lower than three percent****, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any ether name); and*

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this subsection.

(3) ***Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer*** *in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of—*

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter- State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be."

12. Section 8 of the CST Act, 1956 is also quoted below for ready reference:-

"***8. Rates of tax on sales in the course of intet-State trade or commerce***.

(1) Every dealer, who in the course of inter-State trade or commerce, ***sells to a registered dealer*** *goods of the description referred to in sub-section (3),* ***shall be liable to pay tax under this Act, which shall be three per cent of his turnover*** *or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State, whichever is lower:*

Provided that the Central Government may, by notification in the Official Gazette, reduce the rate of tax under this sub-section,

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1), ***shall be at the rate applicable to the sale or purchase of such goods inside***

the appropriate State under the sales tax law of that State.

Explanation.--For the purposes of this sub-section, a dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

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

*(a) ****

*(b) *** **are goods of the class or classes specified in the certificate of registration** of the registered dealer purchasing the goods as being **intended for re-sale** by him or subject to any rules made by the Central Government in this behalf, for **use by him in the manufacture or processing of goods for sale** or **in the telecommunications net-work** or in **mining** or in **the generation or distribution of electricity** or any other form of power;*

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods, being containers or materials intended for being used for the packing of goods for sale;

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the certificate of registration referred to in clause (c).

(4) The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority:

Provided that the declaration is furnished within the prescribed time or within such further time as that authority may, for sufficient cause, permit.

*(5) **Notwithstanding** anything contained in this section, the State Government may on the fulfilment of the requirements laid down in sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,--*

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than

those specified in sub-section (1) as may be mentioned in the notification;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) as may be mentioned in the notification.

(6) ***Notwithstanding*** *anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce* ***to a registered dealer for the purpose of setting up****, operation, maintenance,*

manufacture, trading, production, processing, assembling, ***repairing, reconditioning, re-engineering, packaging or for use as packing material*** *or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.*

(7) The goods referred to in sub-section (6) shall be the goods of such class or classes of goods as ***specified in the certificate of registration*** *of the registered dealer referred to in that sub-section.*

(8) The provisions of sub-sections (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless

the dealer selling such goods furnishes to the prescribed authority referred to in ***sub-section (4) a declaration in the prescribed manner on the prescribed form*** *obtained from the authority specified by the Central Government under sub-section (6), duly filled in an signed by the registered dealer to whom such goods are sold.*

Explanation.--For the purposes of sub-section (6), the expression "special economic zone" has the meaning assigned to it in clause (iii) to Explanation 2 to the proviso to section 3 of the Central Excise Act, 1944 (1 of 1944)."

13. It is true that the liability to pay tax arises under the provisions of the CST Act only upon seller who effects the taxable sale in the course of inter-State Trade or Commerce and only such Dealers can initially obtain the registration under Section 7(1) of the Act, but, the liability to pay tax on purchase of goods is an independent liability of Purchasing Dealer also to pay tax. Section 7(1) only casts an obligation on the Seller liable to pay tax as per Section 6 and to obtain registration. It does not talk of registration or cancellation there of

any purchasing dealer. Section 7(2) provides independent right of any Dealer to obtain registration under the provisions of the CST Act. The said provisions of Section 7(2) of the Act are in two parts which are joined by the words "or" which means independent clauses. In the first category, the Dealer is liable to pay tax under the Sales Tax law of the appropriate State and in the second category, where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in the State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration under the Act. Therefore, the liability to pay tax under the provisions of CST fixed on the Seller is not a condition precedent or the only contingency for getting himself registered under the provisions of the CST Act. Even a person, who is only purchasing goods in the inter-State Trade or Commerce, who may not be liable to pay tax under the provisions of CST Act as a Seller can also secure registration under the provisions of the said Act and can continue with it. Even a dealer liable to tax under State Sales Tax law, which may include even new State GST Act, 2017, can obtain registration under CST Act. In the present case, the Assessee, a Cement Company, continues to be liable to pay tax under local TNVAT Act, 2006 if it sells

or purchases any of these six goods also. The TNVAT Act also has not been completely repealed but now applies only to these six commodities after **1.7.2017**, as per Section 174 of the TNGST Act, 2017.

14. Therefore, on a conjoint reading of both sub-sections (1) and (2) of Section 7 of the CST Act, it is clear that the Respondents/Assessees and their likes can continue to have registration under the provisions of the CST Act and the contention raised on behalf of the Revenue that they have lost their entitlement to be so registered is misconceived and liable to be rejected. We, accordingly, reject the same.

15. The fact that the definition of 'goods' has been amended with effect from **1.7.2017** under the provisions of CST Act to restrict it to six commodities specified in Section 2(d) of the Act does not mean that the entire scope of the operation of CST Act has been amended. The rights of the purchasing Dealers of the goods including the rights to purchase at a concessional rate against Declaration in 'C' forms continues unabated under Section 8(3)(b) of the Act which has not been amended in 2017. The scope of the term 'goods' as defined in Section 2(d) of the Act does not obliterate such seemless flow of the

inter-State Trade or the operatability of the CST Act for both Selling Dealers as well as Purchasing Dealers throughout the country. The Legislature never intended to do so while restricting the applicability of the CST Act only to six specified commodities and take them out of GST Law and taking all other commodities except the six specified items in the GST Tax Law Regime. Such a view on the part of the Revenue is self defeatative and cannot be countenanced by the court. The freedom of trade including the right to purchase in the course of inter-State Trade or Commerce enshrined in Article 301 read with Article 304(b) is not taken away by GST Regime laws.

16. The contention raised on behalf of the State is that the words in Section 7(2) of the Act viz., "***or where there is no such law in force in the appropriate State or any part thereof***" were introduced by the CST (II Amendment) Act, 1958 (Act 31 of 1958) because there were some States, atleast six States/Union Territories, where there was no Sales Tax Act during 1958 when the said Amendment was made in the year 1958 and therefore, to entitle the Dealers of those States where there was no local Sales Tax law applicable also to obtain registration under the provisions of the CST Act, those words were added in Section 7(2) of the Act. The learned

Special Government Pleader for the Revenue, Mr.Mohammed Shaffiq, therefore, submitted that where the proper Sales Tax Law of the State is available right from the beginning like in Tamil Nadu and therefore, the Dealers registered under the Sales Tax Law of the Tamil Nadu State cannot per se claim the registration under the CST Act even if they are not liable to pay tax as Seller under CST Act and therefore, the Registration Certificates already issued to them deserve to be treated as non est and void *pro tanto* upon such Amendment of Laws with effect from **1.7.2017** when the GST Laws introduced in the State with the consequential amendments in the CST Act. He relied upon the decision of *Modi Spinning Mills* (1965) 16 STC 310) to support this contention of *pro tanto* amendment. He also relied upon the decision of the Hon'ble Supreme Court in the case of *MAR-APPRAEM KURI COMPANY LIMITED* (2012) 7 SCC 106) wherein the Hon'ble Supreme Court, dealt with the case of (Central) Chit Funds Act, 1982 and also a parallel Statute in the case of Kerala State Act, (23 of 1975), the court held that the State Act was repugnant to the (Central) Chit Fund Act, 1982 and therefore, it should be deemed to have been impliedly repealed by the Central Chit Funds Act, 1982.

17. These contentions of the learned Special Government Pleader for the Revenue, though attractive at the first instance, also do not merit acceptance by this court. The reason is that the CST Act deals with both the circumstances of Sales or Purchase in the course of inter-State Trade or Commerce. While the inter-State Sale or Purchase is at the bottom of the bedrock of this enactment, the Dealers can either by selling the goods in the course of inter State Trade or Commerce or by purchasing the goods in the course of inter-State Trade or Commerce can continue to do so of course for these six commodities as per the provisions of CST Act, 1956 as amended now. The mere restriction of the operation of the CST Act with respect to six commodities with effect from 1.7.2017 does not take away the right of the Purchasing Dealers to purchase such goods in the course of inter-State Trade or Commerce under the said Act and their registration cannot be said to be either *pro tanto* cancelled nor they can be cancelled as a matter of right by the Revenue Department. The right to deal with in those six goods still continues to vest in the Purchasing Dealers and therefore, this contention is misconceived. Can the Revenue deny the right to sell any of these six goods to these Assesses subject to their compliance with licensing requirements, if

any? The answer would be no. Then how can they deny their right to purchase.

18. Sections 4, 5 and other provisions of the CST Act talk of both Sale or Purchase of goods in the course of inter-State Trade or Commerce. Therefore, the right to purchase, which is, essentially, a part of freedom of trade under Article 301 and 304 of the Constitution, cannot be taken away on the anvil of the argument raised by the learned counsel for the Revenue. Equally, the liability of these dealers to pay tax under local TNVAT Act on these six commodities also continues after 1.7.2017 if sale or purchase is made within the State. Therefore, their right to hold registration under CST Act, 1956 cannot be denied to them under Section 7 of the Act.

19. The next contention of the learned Special Government Pleader for the Revenue is that concessional rate of tax under Section 8(1) of the Act has to be read with the conditions specified in Section 8(3)(b) of the Act viz., against the Declaration in 'C' forms and therefore, such a provision for giving concessional rate of tax should be strictly construed and the said right should be deemed to have been taken away with the Amendment in law with the GST Regime coming into force.

20. This is also a contention equally devoid of merit. Even a strict, literal and plain construction of provisions of the Act does not, in the opinion of this court, disentitle the Purchasing Dealers to purchase these six goods at concessional rate against 'C' forms in the course of inter-State Trade or Commerce. Since the first contention of the State that the registration of such Purchasing Dealer itself is liable to be treated as void is a misconceived contention, this second contention raised for denial of the concessional rate of tax to such Purchasing Dealers is equally unacceptable. Since the Purchasing Dealers can continue to hold their registration under the provisions of CST Act despite the GST law coming into force on **1.7.2017**, their right to purchase at concessional rate by using declaration in 'C' forms under Section 8(1) of the Act read with Section 8(3)(b) of the Act also continues unabated even after **1.7.2017** and therefore, there is no merit in the contention raised on behalf of the Appellant/Revenue.

21. On the other hand, we find considerable force in the contention raised on behalf of the Assessees that the provisions of Section 8(3) of the Act have to be construed, ***ut res magis valeat quam pareat***, (it is better for a thing to have effect than to be made void) so as to make the provision workable. Section 8(3) of the Act

cannot be construed to be rendered unworkable because the text of the said provision does require liability of the Dealer to be discharged by the persons who purchase those six specified goods in the course of inter-State Trade or Commerce and to provide a seemless, harmonious and smooth operation of the Amended CST Act, 1956, the right to purchase the six commodities against 'C' forms has to be continued in the hands of the Purchasing Dealers.

22. It may also be noted here that TNVAT Act, 2006, the State Sales Tax law has also not been been completely abolished with the introduction of GST Regime with effect from **1.7.2017.** It has been restricted for those six items in terms of amended Entry 54 and to which the GST Regime is not extended. Therefore, the sale or purchase of those six items, under the State Sales Tax Act, is even indeed permitted. Therefore, the Respondent/Assessee and other Dealers continued to have liability to pay Sales Tax or VAT under the local State VAT law and therefore, they are entitled to continue their State law registration and on the anvil of that they are equally entitled to registration under the CST Act, 1956. Therefore, even if the conditions required to be complied under Section 7(1) are fulfilled by the Respondent/Assessee, it is not correct in law to contend that their

registration should, either *pro tanto,* be deemed to be cancelled under GST or it is, otherwise, also liable to be cancelled. The manufactured goods by them being governed by GST law is irrelevant for deciding their continued right to purchase Diesel, etc., against 'C' Forms. If resale or manufacturing of goods was to be the acid test for use of 'C' Forms, it would not have been allowed for the purposes like power generation, mining or even telenetwork communication operations.

23. Another ground raised by the learned counsel for the Revenue about the validity of the Circular issued by the Commissioner on **31.5.2018**, which has been quashed by the learned Single Judge, is also without any merit. The provisions of the TNVAT Act contained in Section 48-A of the Act, which is quoted below, does not empower the Commissioner to issue any such Circular or for general interpretation of laws for any such Dealers to obtain the Declaration in 'C' Forms and use them for specified purposes under Section 8(3)(b) of the CST Act, 1956.

> *"**48-A. Clarification and Advance Ruling**.-(1) The Government may constitute a State Level Authority for Clarification and Advance Ruling, (hereinafter in this section, referred to as the Authority) comprising*

of the Commissioner of Commercial Taxes and two Additional Commissioners ***to clarify, any point concerning the rate of tax****, on an application by a registered dealer :*

Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.

(2) ***No application*** *shall be entertained where the question raised in the application,--*

(i) ***is already pending*** *before any appellate or revising authority of the department or Appellate Tribunal or any Court; or*

(ii) relates to an issue which is designed ***apparently for avoidance of tax*** *:*

Provided that no application shall be rejected under this sub-section without giving the applicant ***a reasonable opportunity of being heard*** *and where the application is rejected, reasons for such rejection, shall be recorded in the order.*

*(3) The order of the authority **shall be binding**,*

*(i) **on the applicant** who has sought for the clarification or advance ruling;*

*(ii) **in respect of the goods** in relation to which the clarification of advance ruling was sought ; and*

*(iii) **on all the officers** working under the control of the Commissioner of Commercial Taxes.*

*(4) The Authority shall have **power to review, amend or revoke its clarification or advance ruling at any time** for good and sufficient cause after giving an opportunity of being heard to the affected parties.*

(5) An order giving effect to such review or amendment or revocation shall not be subject to the period of limitation."

24. Section 48-A of the TNVAT Act only empowers the Commissioner to issue Clarification and Advance Ruling only with regard to any point concerning the rate of tax applicable on particular

transaction or commodities. Sub-section (2) on the other hand restricts the Clarifications to be issued where any such issue is pending before any regular Authorities in Appeal or revisional forums or any appellate forum or Tribunal or Court and also prohibits the Assessees to raise such issues and seek Clarifications for avoidance of tax. Sub-section (1) is very clear which empowers the Commissioner to issue Clarifications and Advance Rulings on any point concerning rate of tax only. Sub-section (2) is couched in negative to provide when such applications are not maintainable. Sub-section (3) makes such orders binding on the applicants and in respect of goods for which the Clarification of Advance Ruling was sought and it makes such order binding on all the Officers working under the control of such Commissioner.

25. Therefore, the scope of Section 48A is very limited and does not empower the said Commissioner to issue such general Circulars or any Guidelines to the lower Authorities in the State. Besides thus, being without jurisdiction and any statutory support, the impugned Circular dated 31.5.2018 is also passed in violation of principles of natural justice. There is no justification for creating any invidious classification by creating categories of Dealers, arbitrarily, in violation

of Article 14 of the Constitution as has been done in the impugned Circular. When the first four categories of Dealers are entitled to use 'C' Forms, the Dealers specified in 5th category like Cement Industries etc., who have been denied such benefit, such classification or differentiation has no rational nexus to the object sought to be achieved by the said Circular. It undoubtedly causes serious injustice and denial of freedom of Dealers specified in the 5th category to purchase specified six commodities at the concessional rate against Declaration in 'C' Forms and therefore, any such Circular, which is not in the nature of an administrative order and being a quasi-judicial order and having civil and evil consequences, could not have been passed without affording an opportunity of hearing to the person(s) concerned and apparently that has not been done and therefore, on both these counts, the impugned Circular fails in law and has been rightly quashed by the learned Single Judge. The mere target to achieve more revenue, as has been mentioned in the impugned Circular itself, also cannot be a reason to sustain such Circulars and tax collection, without authority of law is a bane under the Constitutional Scheme and therefore, we are of the opinion that the learned Commissioner has exceeded his jurisdiction to issue such a

Circular. Such similar Circulars have been issued in other States also and some of the Judgments, which we are citing below, have quashed those Circulars. Thus, the Judgment under Appeal of the learned Single Judge deserves to be confirmed on all counts.

26. The contention raised on behalf of the Revenue that registration of the Respondent/Assessee deserves to be cancelled or should be impliedly deemed to be cancelled *pro tanto* upon Amendment of the law is wrong and also has no reason. Firstly, as we have already observed, the TNVAT does not get completely repealed and therefore, the Assessees are liable to pay tax under the TNVAT Act if such purchases are made within the State and therefore, their liability to hold their Registration Certificate would also equally continue. Secondly, the State GST enacted by the State Legislature is also the Sales Tax law of the Appropriate State under which for other commodities manufactured by the Respondent/Assessees, the liability to pay tax on sale of such goods continues and therefore, these Dealers, who had already obtained their registration under CST Act, 1956 and have now obtained registration both under new IGST Act and SGST Act, their registration under the old laws like CST Act, 1956 and State VAT law are also bound to continue even after 1.7.2017.

27. Therefore, what has been contended by the learned counsel for the Revenue can be applied equally against the Revenue Department and the registration of the Dealers in respect of six commodities deserves to continue under old laws like State VAT Act and CST Act, 1956. We should also note that grant of Registration Certificate under the old law as well as new law is not an administrative order, but, a quasi-judicial act or order, which confers certain rights on the Dealers and also certain obligations under such Registration Certificates. The provision for the amendment or cancellation of such Registration Certificates is also specified in the respective enactments and the same can be done only upon an opportunity of hearing granted to the Dealers concerned. Therefore, there is no scope of any implied cancellation or repeal of the Registration Certificates as was contended by the learned counsel for the Revenue. We cannot accept such a flimsy submission only to subserve the interest of more revenue and for which purpose the learned Commissioner has issued the impugned Circular dated **31.5.2018,** which we have already indicated above, does not deserve to hold the field and is liable to be quashed. Therefore, viewed from any angle, all the contentions raised by the learned counsel for the

Revenue Mr.Mohammed Shaffiq have no legal basis to be sustained and are, therefore, liable to be rejected. We, accordingly, reject the same.

28. It may be noted here that the decision to keep those six commodities out of GST Regime wherein separate Laws were enacted by the Parliament and the State Legislatures even by amending Entry 54 of the Seventh Schedule was a deliberate political decision and therefore, the GST Council was constituted of all the States for representation and not only separate GST Acts were enacted by the States, but separate Central IGST Act was also enacted by the Parliament akin to CST Act and the concept of 'sale' was substituted by the concept of 'supply', comprising of total and broader spectrum of transactions of sale of goods as well as rendering of services was included as a taxable event in the GST Law. However, the inter-State Trade or Commerce or International Trade or Commerce was kept as a field of taxation reserved for the legislation by Union Government only, in the 101st Amendment of the Constitution of India. The freedom of trade in the course of inter-State Trade or Commerce is thus a part of basic features of the Constitution of India and such freedom of Trade enshrined in the Constitution was liable to be protected, even with the

new GST regime. Such freedom to purchase even at the concessional rate of tax continued in the amended and protected CST Act, 1956 and only substance of the amendment in the CST Act was to restrict it to the six specified commodities. The debates for even taking these six commodities in the GST Tax Regime is still continuing. But, till that happens by enactment of proper Statutes or proper Amendment of GST Laws, the said six commodities have been kept under the umbrella of CST At, 1956 by suitably amended definition of "goods" under Section 2(i) of the CST Act, 1956.

29. Therefore, the intention of the Legislature, by the series of Amendments, cannot be inferred in the manner canvassed by the learned counsel for the Revenue so as to defeat the right of the Purchasing Dealers to purchase at the concessional rate against Declaration in 'C' form even the said six commodities. No law has prohibited any such Dealers, who purchase the six commodities to start even selling these six commodities and therefore, the Respondent/Assessee like M/s.Ramco Cements Limited can even sell any of those six commodities, subject to their complying with other licensing requirements, if any. Therefore, their act of purchasing any of these six commodities under CST Act cannot be adversely affected.

30. Some discussion of the cited Case Laws now is considered opportune.

31. In *Carpo Power Limited vs. State of Haryana and others* ((2018) 53 GSTR 24 (P&H)), a Division Bench of Punjab and Haryana High Court held that since Section 8 of the CST Act, Rule 12 of the CST (R&T) Rules and Declaration form 'C' have not undergone any amendment, the Revenue Department cannot put any restriction on the usage of 'C' forms only in view of the amendment of definition of "goods" in Section 2(d) of the CST Act. They also highlighted the additional user of 'C' forms provided for purchase of goods against 'C' form in the Telecommunication Network which was added in the relevant Rule at a subsequent stage. The court even granted refund of the excess tax paid by the Assessee for the wrongful refusal to issue 'C' forms to the Assessee. The relevant portion of the decision is quoted below for ready reference:-

> *"25. The provisions of* ***Section 8*** ***of the CST Act, Rule 12 of CST (R&T) Rules*** *and* ***Declaration Form C have not undergone any amendment*** *after the implementation of the GST laws. There cannot be any occasion to restrict the usage of `C'*

Form only for the purposes of re-sale of the six items mentioned in the amended definition of "goods" in ***Section 2*** *(d) of the* ***CST Act****. The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the telecommunications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under* ***Section 7*** *(2) of the* ***CST Act****.* ***Section 7*** *(2) does not stipulate that only a dealer liable to pay tax under the sales tax law of the appropriate State in respect of any particular goods is entitled to apply for registration. Nor does* ***section 7*** *(2) stipulate that an application for registration can be made or `C' Form can be issued only in respect of the sale of the same goods prescribed in the course of an inter-State sale.* ***A dealer liable to pay tax under the sales tax law of the appropriate State in respect of any goods would be covered by Section 7 (2) of***

the Act.

26. There is another aspect of the matter that the ***registration certificate given to the petitioner under the CST Act till date has not been cancelled.*** *As per* ***Section 7*** *(4) of the* ***CST Act****, the registration certificate granted has to be amended or cancelled. The said provisions have not been invoked. In these circumstances, the writ petition is allowed.* ***It is held that the respondents are liable to issue `C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana****. In the event of the petitioner having had to pay the oil companies any amount on account of the first respondent's wrongful refusal to issue `C' Forms the* ***petitioner shall be entitled to refund and/or adjustment of the same*** *from the concerned authorities who collected the excess tax through the*

oil companies or otherwise. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioner in writing and the petitioner furnishing the requisite documents/form."

32. As already noted above, the said Judgment has been affirmed by the Hon'ble Supreme Court with the dismissal of **SLP No.20572 of 2018** (*State of Haryana v. Carpo Power Limited*, dated **13.8.2018**). The brief order of the Hon'ble Supreme Court dated 13.8.2018 reads as follows:-

" Heard the learned counsel for the petitioners and perused the relevant material.

*We do not find **any legal and valid ground for interference**. The Special Leave Petition is dismissed."*

33. A learned Single Judge of Rajasthan High Court in *Hindustan Zinc Limited v. State of Rajasthan and others,* decided on 18.5.2018 ((2019) 64 GSTR 366 (Raj.)), followed the decision of the Punjab & Haryana High Court and issued directions to the Revenue Department to issue 'C' forms to purchase High Speed Diesel, Oil for mining

purpose in the course of inter-State Trade or Commerce despite the GST Law introduced with effect from 1.7.2017. The relevant portion of the said order is quoted below for ready reference:-

> *"16. In the present case too, the Parliament has retained high speed diesel alongwith petroleum crude, motor spirit, natural gas, aviation turbine fuel and alcoholic liquor for human consumption crude which have been specifically mentioned in section 9 of the GST Act while defining the "goods". Besides, the registration under section 7(2) of the Act is still valid and has not been cancelled and can be cancelled only within the parameters of section 4 of the CST Act. Hence, this court finds that it is* ***obligatory duty of the respondents to issue C form*** *to the petitioner-company and any failure on the part of the respondents to do so is without any authority of law.* ***Thus, this court finds nothing to distinguish the case of the petitioners*** *herein from that of*

the petitioner in the case of ***Carpo Power Limited*** *((2018) 53 GSTR 24 (P&H)).*

17. Accordingly, the present writ petitions are allowed in the same terms as Carpo Power Limited ((2018) 53 GSTR 24 (P&H)). It is held that the respondents are liable to issue C forms in respect of the high speed diesel procured for mining purposes through inter-State trade. In the event of the petitioners having had to pay any amount on account of the respondents wrongful refusal to issue C forms the ***petitioners shall be entitled to refund and/or adjustment of the same from the concerned authorities who collected the excess tax****. The concerned authorities shall process such a claim within twelve weeks of the same being made by the petitioners in writing and the petitioners furnishing the requisite documents/form."*

34. Another learned Single Judge of Chhattisgarh High Court in ***Shree Raipur Cement Plant v. State of Chhattisgarh and others*** **(2018(IV)MPJR (SC) 45)**, explaining the amendment in the Law and following the decision of the Division Bench of Punjab and Haryana High Court also concluded that the Assessee would be entitled to make inter-State Purchase of High Speed Diesel from other States as before and his Registration Certificate under the CST Act still holds the field. The relevant portion of the Judgment including the Amendment in Law as discussed by the learned Single Judge are quoted below for ready reference. We respectfully agree with the said view of the learned Single Judge of Chhattisgarh High Court. The relevant portion of the Judgment is quoted below for ready reference:-

> *"20. This definition of "goods" contained in* ***Section 2(d)*** *of the CST Act, 1956 suffered amendment in the* ***Taxation Laws (Amendment) Act****, 2017 published in the Gazette of India on 5-5-2017. The amended definition of "goods" states as under: -*
>
> *"(d) "Goods" means-*
>
> *(i) petroleum crude;*

(ii) high speed diesel;

(iii) motor spirit (commonly known as petrol);

(iv) natural gas;

(v) aviation turbine fuel; and

(vi) alcoholic liquor for human consumption"

*21. Thus, the amended definition of goods under the **CST Act**, 1956 includes high speed diesel and by virtue of the said amendment, the definition of "goods" given under the CST Act stands amended whereby high speed diesel was kept under the meaning of goods amongst other five items.*

*22. The Central Goods and Services Tax Act, 2017 was promulgated and brought into force with effect from **1-7-2017**, which is an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government and the matters connected therewith or incidental thereto. Likewise, the Chhattisgarh Goods and Services Tax Act, 2017*

*(for short, 'the Chhattisgarh GST Act, 2017') was promulgated and brought into force with effect from **1.7.2017** which is also an Act to make a provision for levy and collection of tax on intra-State supply of goods or service or both by the State of Chhattisgarh and the matters connected therewith or incidental thereto. Thus, the CGST Act, 2017 and the Chhattisgarh GST Act, 2017, both have been introduced with effect from **1.7.2017** by the effect of which the statutes which were imposing indirect taxes were repealed and the only indirect taxes that prevailed are the Central GST and the State GST. The levy of goods and services tax on goods and services is being made by the Central Government under the provisions as promulgated under the CGST Act, 2017 and the State Government levy goods and services tax under the provisions as promulgated under the State GST Act. The objective of the Central GST Act and the Chhattisgarh GST Act is*

stated as an Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central Government/State Government and for matters connected therewith or incidental thereto.

23. At this juncture, it would be appropriate to notice the repeal and saving provision of the CGST Act, 2017 i.e., ***Section 174 of the CGST Act, 2017****, which provides as under: -*

> *"**174. Repeal and saving**.--(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the **Central Excise Act**, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special*

*Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the **Central Excise Tariff Act**, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.*

xxx xxx xxx

xxx xxx xxx

xxx xxx xxx"

*24. The aforesaid provision of the CGST Act, 2017 contains a provision pertaining to repeal and saving. It is pertinent to notice that **Section 174 of the CGST Act, 2017 does not include the CST Act, 1956** for the purpose of repealing and as such, **the operation of the CST Act, 1956 is kept intact even after the enactment of the CGST Act, 2017 with effect from 1.7.2017**.*

25. Likewise, the Chhattisgarh GST Act, 2017 also makes a provision for repeal and

saving. Section 174(1) of the Chhattisgarh GST Act, 2017 provides as under: -

*"**174. Repeal and saving**.--(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act,*

*(a) (i) **the Chhattisgarh Value Added Tax Act, 2005 (2 of 2005) shall apply only in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution**.*

(b) (i) the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (52 of 1976);

(ii) the Chhattisgarh Hotel Tatha Vas Grihon Me Vilas Vastuon Par Kar Adhiniyam, 1988 (13 of 1988); and

(iii) the Chhattisgarh Entertainments Duty and Advertisements Tax Act,

1936 (30 of 1936),

(hereinafter referred to as the repealed Acts) are hereby repealed."

26. The aforesaid provision of the ***State Act*** *clearly provides that the Chhattisgarh Value Added Tax Act, 2005 shall apply only in respect of goods included in Entry 54 of the State List of the Seventh Schedule to the Constitution. Entry 54 of the State List of the Seventh Schedule to the Constitution of India as amended by the Constitution (One Hundred and First Amendment) Act, 2016, states as under: -*

*"**54. Taxes on the sale of petroleum**, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of **inter-State trade of commerce** or **sale in the course of international trade or***

commerce *of such goods."*

27. Thus, from the aforesaid analysis, it is quite vivid that the ***Chhattisgarh Value Added Tax Act, 2005 has not been repealed qua the items specified under the amended Entry 54 of the State List of the Seventh Schedule to the Constitution****, whereby high speed diesel is included.*

28. Section 9(2) of the CGST Act, 2017 provides for levy and collections of GST subject to the provisions of sub-section (2) of Section 9 of the CGST Act, 2017. Sub-section (2) of Section 9 of the CGST Act, 2017 carves out an exception as under: -

*"**9. Levy and collection.**--(1) xxx xxx xxx*

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine

fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council."

29. Similarly, Section 9(2) of the Chhattisgarh GST Act, 2017 provides as under: -

"9. Levy and collection.--(1) xxx xxx xxx

(2) The State tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council."

30. Sub-section (2) of Section 9 of the CGST Act, 2017 and the Chhattisgarh GST Act, 2017 clearly provide that GST on crude oil, high speed diesel, aviation turbine, motor spirit (petrol) shall be levied with effect from the date as may be notified by the Government on the recommendations of

the GST Council. Therefore, the CGST Act, 2017 has kept the aforesaid six goods away from the ambit of the CGST Act, 2017 and no notification has been issued by the Central Government on the recommendation of the GST Council imposing GST on high speed diesel at a prescribed rate.

*31. Thus, the net effect of the aforesaid discussion is that after the promulgation of the CGST Act, 2017 and the **State Act**, the items mentioned in the amended Entry 54 of the State List of the Seventh Schedule to the Constitution are governed by the **CST Act**, 1956, as no notification has been issued even under Section 9(2) of the CGST Act, 2017 by the Central Government or by the State Government under Section 9(2) of the Chhattisgarh GST Act, 2017, on the recommendation of the GST Council, therefore, the inter- State trade of high speed diesel would be governed by the **CST Act**, 1956 and the petitioner is entitled to make inter-State*

*purchases of high speed diesel from other States as before and his registration certificate under the **CST Act**, 1956 and the rules made thereunder still holds the field and is valid."*

35. Similarly, another learned Single Judge of Gauhati High Court in the case of ***Star Cement Meghalaya and others v. The State of Assam and others*** **((2018) 57 GSTR 369 (Gau.))** relied upon the provisions of Section 7(2) read with Section 8(3)(b) of the CST Act and held that the Assessee is entitled to make such purchase despite the Amendment of GST Law with effect from **1.7.2017**. The relevant portion of the said decision is quoted below for ready reference:-

*"16. Section 7(2) of the CST Act of 1956 entitles a dealer to get himself registered under the Act, **even if, he is not liable to pay sales tax under the CST Act of 1956, but on the other hand, is liable to pay sales tax under the AVAT Act of 2003.** If the analogy projected in Clause-9 of the circular dated 05.09.2017 that the registration under Section 7(2) of the CST Act*

of 1956 ceases to exist as the dealer is no longer liable to tax under the AVAT Act of 2003 is correct, the withdrawal of the registration under Section 7(2) of the CST Act of 1956 would be acceptable. In other words, if it is the conclusion of the authorities in the Govt. of Assam in the Taxation and Finance Department that from 01.07.2017, the petitioners are not liable to pay taxes under the AVAT Act of 2003, in such event, their registration under Section 7(2) of the CST Act of 1956 would also not be sustainable inasmuch as, under Section 7(2) of the Act any dealer liable to pay tax under the Sales Tax Law of the State, may, notwithstanding that he is not liable to pay tax under the Act, apply for registration. The pre-requisite of being entitled for a registration ***under Section 7(2) of the CST Act of 1956 is that the dealer so registered is liable to pay tax under the sales tax law of the State, which in the***

present case would be AVAT Act of 2003*. Therefore, if according to the authorities in the State of Assam in the Taxation and Finance Department the petitioners are not liable to pay any tax under the AVAT Act of 2003, from* ***01.07.2017*** *onwards, the authorities may withdraw the registration under Section 7(2) of the CST Act of 1956, inasmuch as, the pre-requisite of Section 7(2) of being liable to pay tax under the state sales tax law ceases to exist.*

... ...

29. But the question that would arise would be if the petitioners continue to remain leviable for a tax under AVAT Act of 2003, which admittedly is a State law, they would also continue to remain entitled to have their registration under Section 7(2) of the CST Act of 1956 inasmuch as, if a dealer is leviable under the State law, he would also be entitled to be registered as a dealer under Section 7(2) of the

Act. From the said point of view ***the cessation of their registration under Section 7(2) of the Act as provided in the circular dated 05.09.2017 would be unsustainable****.*

30. For a clarification we have to refer to the provisions of ***Clause-9 of the circular dated 05.09.2017*** *which inter alia provides that a dealer who is making interstate purchase of high speed diesel against Form-C for use in the manufacture or processing of a good, other than the aforesaid six goods retained under section 2(d) CST Act of 1956 would cease to be a dealer under section 7(2) of the Act with effect from* ***01.07.2017*** *as their liability to pay tax under the AVAT Act of 2003 had ceased to exist from* ***01.07.2017****.*

31. The circular dated ***05.09.2017*** *providing for the withdrawal of the registration under section 7(2) of the CST Act of 1956 is based on the reason that such dealers involved in*

interstate purchase of the six goods and using them for a manufacturing of a good other than the six goods, are no longer leviable to a tax under the AVAT Act of 2003 from ***01.07.2017****. But as already discussed hereinabove* ***section 174(1) of the AGST Act of 2017 clearly provides that the AVAT Act of 2003 continues to remain in force in respect of the six goods retained under Section 2(d) of the CST Act of 1956*** *and also included in the entry-54 of the State list of the Seventh Schedule of the Constitution of India.*

32. From the aforesaid provisions of Section 174(1) of the AGST Act of 2017 and also in view of there being no date notified either by the Central Government and the State Government under Section 9(2) of the CGST Act of 2017 and AGST Act of 2017, respectively and there being no date recommended by the Goods and Services Tax Council, as required under Section 12(5) of

the Constitution (One Hundred and First Amendment) Act, 2016 and also there being no such provision in the AVAT Act of 2003 that in the event any of the six retained goods are used for manufacture of a good other than the six goods, then no tax is leviable under the AVAT Act of 2003, ***the provisions in the circular dated 05.09.2017*** *that from* ***01.07.2017*** *onwards, the dealers dealing interstate purchase of high speed diesel and using it for manufacture of a good other than the six good are no longer liable to pay a tax under the AVAT Act of 2003* ***is incorrect and unacceptable****."*

36. The learned Single Judge of this court in the case of the Assessee itself in the present Judgment under Appeal also gave similar reasoning, which we affirm by this Judgment, also quashed the Circular dated **31.5.2018** issued by the learned Commissioner of Commercial Taxes on the ground of breach of principles of natural justice as the same was issued by the learned Commissioner without giving an opportunity of hearing to the Assessees. The relevant

reasons given by the learned Single Judge which we affirm are also quoted below for ready reference:-

> *"39. On the basis of aforesaid analysis, it is held that the petitioner is a registered dealer under the provisions of the CST Act, 1956 read with the Rules of 1957 and his registration certificate under the CST Act, 1956 read with the Rules of 1957* ***continues to be valid for the purpose of inter-State sale and purchase of high speed diesel despite the petitioner having been migrated to the GST regime with effect from 1-7-2017****, as the definition of goods as defined in Section 2(d) of the CST Act, 1956 has been amended prior to coming into force of the CGST Act, 2017 from* ***1-7-2017*** *which includes high speed diesel. Further, under Section 9(2) of the CGST Act, 2017, the GST Council has not made any recommendation for bringing high speed diesel within the ambit of the CGST Act,*

2017 and therefore the Central Government has not notified high speed diesel to be within the ambit and sweep of the CGST Act, 2017. Thus, the petitioner's registration certificate under the CST Act, 1956 is still valid for the goods defined in Section 2(d) of the CST Act, 1956, including high speed diesel, and the petitioner is entitled for issuance of C-Form for inter-State purchase / sale of high speed diesel against the said C-Form. ***Accordingly, the respondents shall be liable and are directed to issue C-Form to the petitioner in respect of high speed diesel to be purchased by the petitioner and used in the course of manufacture of cement*** *and for that, it is further directed to* ***rectify and remove the error on their official website*** *and entertain the petitioner's application submitted on-line on the official website seeking issuance of 'C' Form to the petitioner*

for said goods."

39. The above decisions of various High Courts, more particularly, the order passed by Punjab and Haryana High Court made in ***Caparo Power Ltd's case****,* ***confirmed by the Hon'ble Supreme Court****, would show that the respondents herein are not entitled to take a different stand, especially, when the facts and circumstances in all these cases before this court as well as before the other High Courts, as extracted supra, are one and the same. In other words, the issue involved in these cases as well as the cases before the other High Courts is one and the same, out of which, one decision was confirmed by the Apex Court as well. Therefore, I find that the impugned communications, apart from being without jurisdiction, are not sustainable also on the reasons and findings rendered by the Punjab and Haryana High Court on the same issue, confirmed by the Apex Court.*

40. In fact, though this Court has raised

specific query to the learned Additional Advocate General as to how the above decisions rendered by the various High Courts are not applicable to the present facts and circumstances, especially when the issue is one and the same, she is not in a position to convince this Court in any manner and make any distinction on the facts and circumstances of the present case before this Court and the cases dealt with by other Courts.

41. The learned Additional Advocate General contended that these writ petitions are not maintainable as against the internal communication. I have already found that the ***letter dated 31.05.2018 cannot be brushed aside as a simple internal communication****, as the finding/conclusion made therein by the Commissioner of Commercial Taxes directly affects the rights of the petitioners conferred under Section 8(3)(b) of CST Act. Therefore, the petitioners are entitled to question the said communication dated*

31.05.2018. *Even otherwise, it is to be seen that* ***such communication was issued by the Commissioner of Commercial Taxes without hearing the petitioners. Therefore, the unilateral decision arrived by the Commissioner of Commercial Taxes undoubtedly violates the principles of natural justice***. *Likewise, the other two communications are also in violation of the principles of natural justice and therefore, the petitioners are entitled to challenge those communications as well. No doubt, under normal circumstances, this Court would remit the matter back to the respondents for reconsidering the issue after hearing the petitioners. I do not think that such remand is required in these cases under the facts and circumstances as discussed supra, more particularly,* ***when the fact remains that Section 8(3)(b) has not been amended*** *and based on which, the petitioners are entitled to avail the benefit under the said provision, while they purchase the*

petroleum products by way of interstate sale against 'C' declaration forms."

37. A Division Bench of Orissa High Court headed by the Hon'ble Chief Justice in the case of ***Tata Steel Ltd.*** **v.** ***State of Orissa*** **((2019) 70 GSTR 99 (Orissa))**, after quoting the aforesaid decisions of various High Courts and reiterating the same legal position, has concluded that the Circular issued by the Government of India, Ministry of Finance dated **1st November 2018** addressed to the Commissioner of Commercial Tax of all States/Union Territories to give effect to the decision of the Division Bench of Punjab & Haryana High Court in *Carpo Power Limited* case (supra) as the same stood affirmed by the Hon'ble Supreme Court with the dismissal of the SLP on **13.8.2018**. The relevant portion of the above judgment is also quoted below for ready reference:-

> *"3. The aforesaid decision of Punjab and Haryana High Court was the subject-matter of S. L. P. to Appeal (C) No.* ***20572 of 2018*** *before the Honourable Supreme Court, which came to be dismissed on* ***August 13, 2018*** *after which the Central Government has come*

out with the clarification by their letter dated ***November 1, 2018****, which reads as under:*

" ***F-No. S-29012/64/2018-ST-II-DoR***

Government of India, Ministry of Finance,

Department of Revenue, State Taxes Section.

.....

Room No. 275,
North Block, New Delhi.
Dated the ***1st November, 2018****.*

To:

The Commissioner of Commercial Tax of all States/Union Territories.

Subject: Regarding definition of goods in sub-section (3)(b) of section 8 of the Central Sales Tax Act, 1956 and issuance of Form-C.

Sir/Madam,

I am directed to refer to ***OM dated November 7, 2017*** *(copy enclosed) regarding clarification of definition of goods in sub-section*

(3)(b) of section 8 of the Central Sales Tax Act, 1956 and to say that Honourable Punjab and Haryana High Court has considered the issue of C forms in respect of Natural Gas purchased by the petitioner in one State and used in another State vide judgment dated ***March 28, 2018*** *in C.W.P. No. 29437/2017 filed by Carpo Powers Limited which has been upheld by the Honourable Supreme Court vide its order dated August 13, 2018 in SLP No. 20572/2018 in this matter.*

2. ***This matter has been examined in Department of Revenue*** *and it has been decided to forward copy of aforesaid judgment dated March 28, 2018 (copy enclosed) of Honourable High Court of Punjab and Haryana and order dated August 13, 2018 (copy enclosed) of Honourable Supreme Court* ***for compliance in the respective States****.*

End : As above.

Yours faithfully,
(Sd.) (MAHENDRA NATH),
Under Secretary (Sales Tax Section -II).
Tele : 23092419."

....

5. Taking into consideration, we are of the opinion that the circular dated August 17, 2017, which is partially quashed by the Punjab and Haryana High Court and has been approved by the Honourable Supreme Court. Other High Courts also have taken a similar view. In that view of the matter, it will not be appropriate to now enforce the circular dated August 17, 2017 and the ***Circular of November 1, 2018 will prevail along with the judgments which are referred herein above****, the authorities are bound to implement all decisions referred to above and we are approving the ratio laid bound those decisions and we direct the State Government to follow and act in accordance with the ratio of those*

decisions.

6. With the aforesaid observation and direction, this writ petition stands disposed of."

38. The Division Bench of Jharkhand High Court in *Tata Steel Limited v. State of Jharkhand ((2019) 70 GSTR 364 (Jharkhand))* decided on 23/28th August 2019 reiterated the same position. The relevant portion of the Head Note of the Law Reports is quoted below for ready reference:-

"The petitioners engaged in manufacturing process, or mining activities or engaged in power generation were bulk purchasers of "high speed diesel" which they required for their manufacturing process/mining activities/ generation of power, as the case might be, which was used in manufacturing, mining, or generation of the goods, which were their end-products available for sale. For implementation of the GST regime necessary amendment in entry 54 of the State List of the Seventh Schedule to the Constitution of India was

made. Necessary amendment was also made in Central Sales Tax Act in the definition of "goods" as defined under section 2(d) of the Central Sales Tax Act. The said definition which was earlier having very wide scope was given a very restricted meaning including only six items. Admittedly, the petitioners' end-products did not come within the definition of "goods" as defined under section 2(d) of the Central Sales Tax Act, whereas "high speed diesel", which they required in their manufacturing process, came within the definition of "goods" as defined under the Central Sales Tax Act. A circular dated ***October 11, 2017*** *was issued by the State of Jharkhand, in its Commercial Taxes Department, denying the issuance of form C for all the items included in definition of "goods" given under section 2(d) of the Central Sales Tax Act, including "high speed diesel". The circular had been issued on the pretext that after coming into force of the Goods and Services Tax regime in the State with effect*

*from **July 1, 2017**, all the six items which had been excluded in Jharkhand Goods and Services Tax Act, 2017, i.e., alcoholic liquor for human consumption, which is exempted under section 9(1) of the State GST Act, and petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel on which, the liability to pay tax under the State GST Act was deferred till the notification issued under section 9(2) of the said Act, were still governed by the Jharkhand Value Added Tax Act. The dealers dealing in the goods except the aforementioned six items, were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, the registration under the Jharkhand Value Added Tax Act had come to an automatic end with effect from **July 1, 2017**. It was further stated in the said circular that some of the dealers who were not liable to pay tax under the Central Sales Tax Act, were still registered under section 7(1) of the Central Sales Tax Act, as they were liable to pay tax*

under the Jharkhand Value Added Tax Act. Since such dealers were not selling the aforesaid six goods, they were no more liable to pay tax under the Jharkhand Value Added Tax Act, and as such, their registrations under Section 7(2) of the Central Sales Tax Act as well, had become invalid with effect from ***July 1, 2017****. As such, those dealers would not be entitled to inter-State purchase of the aforesaid six items, on the concessional rates of tax under the provisions of the Central Sales Tax Act, on the basis of form C. It was the stand of the State Government that* ***since the end-products of the petitioners after their manufacturing process, mining process, or power generation process, were not covered by the definition of "goods"*** *given under section 2(d) of the Central Sales Tax Act,* ***their registration under Section 7(2) of the Central Sales Tax Act came to an automatic end and hence they were not entitled for issuance of form C for claiming***

lesser rate of tax *on the inter-State purchase of "high speed diesel" made by them for their manufacturing, mining/power generation activities. Accordingly, the State Government decided not issue form C to such dealers for inter-State purchase of the aforesaid six goods.* ***An office memorandum dated November 7, 2017 was also issued by the Union of India*** *and its Ministry of Finance, Department of Revenue, State Tax Division, clarifying that the term "goods" referred to in section 8(3)(b) of the Central Sales Tax Act, would have the same meaning as defined and amended under section 2(d) of the Central Sales Tax Act, vide the Tax Laws Amendment Act, 2017. Pursuant to the decision in* ***Carpo Power Limited v. State of Haryana (2018) 53 GSTR 24 (P&H)****, (CWP No.29437 of 2017, decided on March 28, 2018), and the subsequent dismissal of the SLA preferred against the judgment passed by the Punjab and Haryana High Court the Central*

Government in its Ministry of Finance, Department of Revenue, New Delhi, issued letter dated ***November 1, 2018****, addressed to Commissioners of Commercial Taxes of all the States/Union Territories on the subject regarding issuance of form C, and making further clarification to its earlier* ***OM dated November 7, 2017****, stating that in view of the judgment passed by the Punjab and Haryana High Court in Carpo Power Limited case* ***(2018) 53 GSTR 24 (P&H)****, which was upheld by the Supreme Court by its order dated* ***August 13, 2018 in SLP No.20572 of 2018, the Central Government issued letter dated November 1, 2018, addressed to Commissioners of all the States/Union Territories on the subject regarding issuance of for C, making further clarification to its earlier OM dated November 7, 2017*** *to the effect that the issue in* ***question had been set at rest in view*** *of the decision of the Punjab and Haryana High Court, in Carpo Power*

Limited case (2018) 53 GSTR 24 (P&H), as affirmed by the Honorable Supreme Court. Thereafter, a supplementary counter-affidavit had been filed on behalf of the respondent-State, in which, after considering the letter dated ***November 1, 2018*** *issued by the Ministry of Finance, Government of India, the State Government had stuck to its earlier stand as taken in the circular dated* ***October 11, 2017****, denying the issuance of form C to the dealers, with respect to the six items, covered under section 2(d) of the Central Sales Tax Act. The petitioners filed writ petition submitting that the notification dated* ***October 11, 2017*** *was absolutely illegal. The State Government had taken the stand through its letter dated* ***August 21, 2019****, addressed to the learned Senior Standing Counsel-Jharkhand High Court that those dealers who had migrated to GST regime and who are not selling the aforesaid six goods covered under section 2(d) of the Central Sales Tax Act, were not covered under*

section 7(1) of the Central Sales Tax Act as well:

Held, allowing the petitions, that the use of the expression "goods" referred to in the first half of section 8(3)(b), i.e., on first three occasions could be understood in the sense as was defined in Section 2(d) of the Central Sales Tax Act, whereas the expression "goods" in the second half of the clause, i.e., on the fourth occasion could not be understood in the sense as defined in section 2(d) of the Central Sales Tax Act as it referred to the manufactured goods. ***In the case of the writ petitioners, their end-products need not be "goods" within the meaning of section 2(d) of the Central Sales Tax Act****. Also the registration of dealer under Section 7(2) of the Central Sales Tax Act is not subject to any liability of the dealer to pay the tax or not, the dealers are entitled to continue to be registered under Section 7(2) of the Act,* ***irrespective of the fact whether they are liable to pay any tax to State or not****. There was no*

merit in the submission of the State that since the dealers were no more liable to pay tax under the Jharkhand Value Added Tax Act, in view of the fact that the word "goods" used in Section 2(i) of the Central Sales Tax Act defining the "sales tax law" would mean only those six goods as defined under section 2(d) of the Central Sales Tax Act and that their registration under Section 7(2) of the Act would come to an automatic end. That being the position, the very reasoning for issuance of the circular dated October 11, 2017 had no legs to stand in the eyes of law and could not be sustained. Accordingly, the circular dated October 11, 2017 issued by the State Government in its Commercial Taxes Department, which had been challenged in all these writ applications, was to be quashed.

PRINTERS (MYSORE) LTD. v. ASSTT. COMMERCIAL TAX OFFICER (1994) 93 STC 95 (SC), COMMISSONER OF SALES TAX v. MADHYA BHARAT PAPERS LTD. (2000) 117 STC 547 (SC) and CARPO

POWER LIMITED v. STATE OF HARYANA (2018) 53 GSTR 24 (P&H) followed."

39. Therefore, if a Dealer has a right to sell as well the restricted six items under CST Act, one fails to understand as to how their right to purchase those goods at present time under the existing Registration Certificates can be taken away merely because they are not selling those goods. If sale of the goods was the only criteria of registration under the CST Act, the consequent amendments would not have allowed concessional rate of tax for purchase of those six commodities for user in activities like Mining or Telecommunication Networks, where no such resale or use in manufacturing is involved. Therefore, such a right is equally available to other industries like Cement Industries and the same cannot be denied to them. That would result in an invidious classification in violation of Article 14 of the Constitution of India, which is neither envisaged nor is called for. Therefore, the contentions raised on behalf of the Revenue are not sustainable at all.

40. Consequently, we are of the opinion that the Writ Appeals

filed by the Revenue have no merits and deserve to be dismissed and respectfully agreeing with the views expressed by other High Courts and confirming the view of the learned Single Judge in the impugned Judgment in Appeal before us we dismiss the present Writ Appeals filed by the State. No order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

41. The Appellant State and the Revenue Authorities are directed not to restrict the use of 'C' Forms for the inter-State purchases of six commodities by the Respondent/Assessees and other registered Dealers at concessional rate of tax and they are further directed to permit Online downloading of such Declaration in 'C' Forms to such Dealers. The Circular letter of the Commissioner dated **31.5.2018** stands quashed and set aside along with the consequential Notices and Proceedings initiated against all the Assessees throughout the State of Tamil Nadu.

(V.K.,J.)(R.S.K.,J)
9.3.2020

Index:Yes
Internet:Yes
ssk

To:

1. The Commissioner of Commercial Taxes,
   Chepauk, Chennai 600 005.

2. The Additional Commissioner (CT),
   Large Tax Payer's Unit,
   5th Floor, Dugar towers,
   No.34, Marshalls Road,
   Egmore, Chennai 600 008.

3. The State Tax Officer,
   Thiruvallikeni Assessment Circle,
   Greenways Road, Chennai 600 028.

4. The Joint Commissioner (CS)
   (Systems),
   PAPJM Buildings,
   No.1, Greams Road,
   Chennai 600 006.

5. The Ramco Cements Ltd.
   rep. by its General Manager-Legal
   Thiru.T.Mathivanan,
   Auras Corporate Centre, V Floor,
   98-A, Dr.Radhakrishnan Salai,
   Mylapore, Chennai 600 004.

6. Sundaram Fasteners Limited,
   rep. by its President Finance,
   S.Meenakshisundaram,
   98-A, Dr.Radhakrishnan Salai,
   Mylapore, Chennai 600 004.

DR.VINEET KOTHARI, J.
AND
R.SURESH KUMAR, J.

ssk

P.D. JUDGMENT IN
W.A.Nos.3403, 3413, 3414 and 2812 of 2019

Delivered on
9.3.2020