GAHC010011272018

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/366/2018

STAR CEMENT MEGHALAYA
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT LUMSHNONG, P.O. KHALIERHIAT IN THE DIST. OF EAST JAINTIA HILLS, MEGHALAYA- AND REP. BY SRI NIRMAL AGARWAL, THE AUTHORISED SIGNATORY OF THE PETITIONER COMPANY.

VERSUS

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, ASSAM SECRETARIAT, DISPUR, GUWAHATI 2:THE COMMISSIONER OF STATE TAXES
(earlier known as COMMISSIONER OF TAXES) KAR BHAWAN
DISPUR GUWAHATI

3:INDIAN OIL CORPORATION LTD.
GUWAHATI DIVISIONAL OFFICE
EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI-21

Advocate for the Petitioner : DR. ASHOK SARAF

Advocate for the Respondent : SC, FINANCE AND TAXATION

BEFORE
HON BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 29.01.2018

Heard Dr. A. Saraf, learned senior counsel for the petitioner and Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department.

The petitioner herein is a registered dealer under the CST Act in respect of certain items, which are included amongst the 06(six) goods, which are retained to be taxed under the CST and excluded from the new GST Act. The petitioner utilized the six retained goods for the purpose of manufacturing certain items, which resulted in a finished product which took the form of being goods outside the purview of the six retained goods. In the circumstance, the petitioner is aggrieved by a circular No.7/2017-GST dated 05.09.2017, which inter-alia recognizes the situation that levy of a tax on sale on the six goods have been retained, whereas all other goods have been made subject to levy of GST under the GST Act. The petitioner is aggrieved by Clause-9 of the said circular, which inter-alia provides that the dealers including the work contractors, who are making inter-state purchase of Petrol and HS Diesel against Form-C and are amongst the six retained goods, for use and manufacture of processesed goods other than the said six retained goods, would now cease to be dealers under the CST Act w.e.f. 01.07.2017. The meaning and purport of Clause-9 of the circular would be that such dealers who purchase an item within the six retained goods, but uses it for the manufacture of any goods other than the six retained goods, would now cease to be a dealer under the CST and the implication thereof would be that such dealers now cannot register themselves under the CST Act.

At the same time, a reading of Clause-1 of the Circular also gives the impression that such dealers, who deal with the six retained goods for the purpose of manufacturing or processing a goods, which do not fall within the six retained goods, cannot even be registered under the GST Act as because the said six goods are specifically excluded from the purview of the GST. In the circumstance, a situation may arrive where such dealers who deal with the six retained goods use it for manufacture of any other goods, now cannot be registered under the CST Act as well as under the GST Act.

The State respondents on the next date fixed shall explain the aforesaid position, more so, in view of the decision of the Hon'ble Supreme Court rendered in Printers (Mysore) Ltd and another –vs- Asstt. Commercial Tax Officer and others, reported in (1994) 2 SCC 434, wherein in paragraph-18, it had been held that the expression goods appearing in the first part of Section 8(3)(b) of the CST Act has a different meaning and purport than the expression goods appearing in the later part of the said section.

In the instant case, on a factual comparison, the six goods excluded from the GST would have to be considered to be within the meaning of the expression goods appearing in the first part of the section 8(3)(b), whereas the manufactured goods would have to be considered within the meaning of the expression goods appearing in the later part of the section 8(3)(b) of the CST Act.

List the matter again on 31.01.2018 for the submission of the learned Standing Counsel for Finance and Taxation Department.

Depending on the submission that may be made, further order shall be passed.

Let a copy of this order be furnished to Mr. B. Gogoi, learned Standing Counsel for Finance and Taxation Department.

JUDGE

Comparing Assistant