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Vpssr Facilities vs.commissioner of Value Added & Anr.

Vpssr Facilities vs.commissioner of Value Added & Anr.

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Court : Delhi

Decided On : Feb-15-2017

Appellant : Vpssr Facilities

Respondent : Commissioner of Value Added & Anr.

Judgement :

* % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Delivered on:

15. h February, 2017 + WP(C) 7843/2014 VPSSR FACILITIES .....

... Petitioner
Versus COMMISSIONER OF VALUE ADDED & ANR. Advocates who appeared in this case: For the

... Petitioner
: For the

... RESPONDENTS
: Mr Satyakam with Mr Nikhil Bhardwaj, Advs. for R-1. Mr Vineet Bhatia, Adv. with Ms Neha Choudhary. Mr Anshuman Sinha with Mr Imran Alam, Adv. for R-2. Mr Jagjit Singh, Adv. for Railways. .....

... RESPONDENTS
CORAM:-

"HONBLE MR. JUSTICE BADAR DURREZ AHMED HONBLE MR. JUSTICE SANJEEV SACHDEVA JUDGMENT SANJEEV SACHDEVA, J WP(C) 7843/2014 & CM No.18415/2014 1. The petitioner (Contractor) impugns the order dated 30.06.2014 passed by the Commissioner Valued Added Tax holding that the chemicals/Solvents used in the process of cleaning, amounted to sale of goods and the moment the chemicals were poured on the property of the Contractee, even though used for the purposes of cleaning, amounted to delivery of the same and thus the same was exigible to WP(C)No.7843/2014 Page 1 of 21 Tax.

2. The questions that arise for consideration in the present writ petition are whether the consumable chemicals/solvents used in the process of cleaning amounts to transfer of property in the goods between the contractor and the Contractee and is thus exigible to tax. The second question raised by the petitioner, i.e. whether the Commissioner was liable to grant a certificate for NIL deduction of Tax Deducted at Source, is dependent on the answer to the above question.

3. The petitioner is engaged in the business of providing services of maintenance, cleaning, washing, housekeeping, waste management, etc.

4. The petitioner was awarded a contract by the Northern Railways (hereinafter referred to as the Contractee) in relation to the management, cleaning, washing, housekeeping, waste management, etc. at Diesel Shed Shakurbasti and at Training School Shakurbasti.

5. It is contended by the petitioner that the contract was for cleaning of sites of Northern Railways (Contractee) and was a pure service contract and no transfer of property from the

... Petitioner
(Contractor) to Northern Railways (Contractee) was involved. It is contended that the activities undertaken by the petitioner did not constitute a sale within the meaning of Delhi Value Added Tax, 2004 (hereinafter referred to as the DVAT Act). WP(C)No.7843/2014 Page 2 of 21 6. It is contended that being a service contract the petitioner is paying service tax @ 12.36% on the entire consideration

received by it from the Contractee. There is no separate payment made for the use of consumables. It is contended that as the payment made by the Contractee to the petitioner was not because of transfer of property in goods, no tax was required to be deducted at source under Section 36(A) of the DVAT Act. It is contended that the Contractee (Railways) to be on safe side insisted on deduction of tax at source.

7. It is contended that for the purposes of providing the service of cleaning, the petitioner was required to use soap/detergent/chemical of a very minimal quantity and a very nominal value. The soap/detergent/chemical was used for removing the muck/grime and the same got completely consumed in the process and were not transferred to the Railways. It is contended that the contract involved pure labour and service and was a mere works contract.

8. An application was filed before the Commissioner of DVAT under Section 36(A) (2) of the DVAT Act seeking certificate to the effect that the Railways should not deduct tax at source.

9. By the impugned order dated 30.06.2014, the Commissioner (DVAT) relying on the judgment of the Kerala High Court in Enviro Chemicals Vs. State of Kerala 39 VST434(Ker) held that the moment the applicant pours the chemical on to the property of the WP(C)No.7843/2014 Page 3 of 21 Contractee, he will cease to be the owner and at that point of time the awarder must be deemed to have taken delivery of the same.

10. In Enviro Chemicals (Supra) the court held that upon chemical being poured into the effluent, it loses its identity and that, it is consumed will not detract from the fact that there is delivery of the same to the awarder (Contractee), accordingly, the exigibility to tax is beyond any doubt.

11. Northern Railways arrayed as Respondent No.2 filed its counter affidavit contending that there is no transfer of property involved from the petitioner to the Railways and these materials are not supplied directly to the Railways and Railways does not release any payment against the said materials.

12. The counter affidavit lists out the material/accessories and its quantity required per month. It is also contended that all consumable items are to be deposited in the sheds store (with the Railways) per month and these materials are to be issued after recommendations of the competent authority or nominated supervisor. The counter affidavit further contends that the arrangement of handing over the material to Railways is an operational procedure to ensure that the requisite quantity of consumables is used by the contractor. It is specifically averred that transfer of property is not involved in this contract. WP(C)No.7843/2014 Page 4 of 21 13. Per contra, Special Commissioner, Department of Trade & Taxes filed the counter affidavit on behalf of Department of Trade & Taxes and defended the impugned order contending that the contract between the parties i.e. the petitioner and the Railways is a works contract of a composite nature. The property in goods i.e. chemical is transferred by the petitioner to the Railways. The petitioner is required to calculate chemical/solvent per month and the same has to be delivered by the petitioner to the Railways. The contract stipulates that cost of chemicals and machines is included in activities mentioned in the schedule of unit rates.

14. It is contended that it is not just a service contract but a composite contract including transfer of property in goods involved in execution of the work contract. It is contended that the chemicals have been used extensively in the process of preparing, improving and cleaning of Railways property. The chemicals/solvents used are goods involved in execution of the works contract and the moment the petitioner poured chemicals on the property of the Railways he ceased to be the owner and at that point of time, the Railways is deemed to have taken delivery of the same. Thus, it is contended that the scope of work to be performed is such that there is transfer of property from the petitioner to the Railways, in the chemicals/solvents involved, in the execution of the works contract.

15. To settle the controversy, let us examine the relevant provision of the DVAT Act. WP(C)No.7843/2014 Page 5 of 21 16. Section 2(1) (zc) of the DVAT Act defines sale as under: sale with its grammatical variations and cognate expression means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable consideration (not including a grant or subvention payment made by one government agency or department, whether of

the Central Government or of any State Government, to another) and includes- (i) ******** (ii) ******** (v) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; (vi) ******** 17. In terms of Section 2(1) (zc) of the DVAT Act, when goods are used in execution of a works contract and there is transfer of property in such goods, then there is a deemed sale of the goods irrespective of the fact that the goods are in the same form or their form has changed.

18. The core issue is whether there is any transfer of property in the chemicals etc. that are used by the petitioner in the execution of the awarded work.

19. The

... Petitioner
has been awarded the contract for execution of the work of Housekeeping, maintenance, cleaning, waste management and Locomotives cleaning & washing. The scope of work awarded to WP(C)No.7843/2014 Page 6 of 21 the petitioner is as under:-

"No.1.

2.

3.

4.

5. 6.

7. Description of Activity Mechanized scrubbing of shed floor to keep it free from muck / grim arises due to dropping of oil / grease / effluents and industrial waste by using biodegradable floor chemicals / solvent. Mechanized scrubbing by floor scrubbing / scarifying machine, removal of industrial waste along with muck, unwanted / useless and dumping the same at the nominated place within the shed complex. Mechanized scrubbing of oil godown floor Diesel main store to keep it free from muck / grim arises due to dropping of oil / grease / effluents and industrial waste by using biodegradable floor chemicals / solvent and floor

scrubbing / scarifying machine, removal of industrial waste along with muck, unwanted / useless and dumping the same at the nominated place within the shed complex. Cleaning of floor of main shed, SMM store, Lab & Administrative block to keep it free from dropping of oil / grease / grime / effluent including removal of cobwebs from covered area. Cleaning of DEMU Care Centre, DEMU Block and Diesel Training Centre SSB to keep it free from dropping of oil / grease / grime / effluent including removal of cobwebs from covered area. Cleaning of rooms, veranda, etc. of Lab, Administrative block and offices of Sr. Subordinate Supervisors with wiping by wet and dry moppers. Cleaning of rooms, veranda, etc. of DEMU Block and Diesel Training Centre SSB with wiping by wet and dry moppers. To keep floor, side walls of inspection pits free from muck / grime / arises due to dropping of oil / grease / effluents and industrial waste by using high-pressure cold / hot jet cleaner. Removal of unwanted industrial waste WP(C)No.7843/2014 Page 7 of 21 and dumping the same at the nominated place within the shed complex. To keep floor, side walls of DEMU Care Centre pits free from muck / grime / arises due to dropping of oil / grease / effluents and industrial waste by using high-pressure cold / hot jet cleaner. Removal of unwanted industrial waste and dumping the same at the nominated place within the shed complex. De-silting and cleaning of man holes less than two mts. deep. De-silting and cleaning of man holes more than two mts. deep. De-silting and cleaning of connected underground drains / Sewerage / well through truck mounted suction sum high pressure jet sewer cleaning machine.

8.

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11.

12. De-silting and cleaning of open drain 13. Cleaning of toilets by high-pressure water jet cleaner, removal of silt and muck from urinals.

14. Cutting of grass and shrubs in the shed premises 15. Loco Washing / cleaning 16.

17. Cleaning of Pit wheel lathe machine complex to keep it free from dropping of oil / grease / grime / effluent / Waste metal chips including removal of cobwebs from covered area. Disposal of industrial waste from Diesel shed Shakurbasti to dumping ground (municipal area) with labour for loading / unloading and transportation.

20. For the execution of the above work of maintenance, cleaning washing of locomotives etc. the petitioner is required to use WP(C)No.7843/2014 Page 8 of 21 Chemicals/solvents.

21. Clause 38 of the Special Conditions of Contract reads as under: 38. Chemical / Solvents and machines Chemical / Solvents used should be Eco-friendly, bio degradable pH value 7-8. Chemical/solvent can be tested by Railway from the independent lab at the contractor's cost. Chemical/solvents used should be of reputed brand. Contractor after having gone through the scope of work will calculate the requirement of chemical/solvent required per month/year. Chemical will be supplied by the contractor and shall be kept in the custody of Railway. These chemicals will be issued to the contractor on daily basis as per requirement submitted by the contractor and empty bottle s/cans are required to submit back to issuing authority after completion of daily work. Railway will not pay any amount separately to contractor for purchase of chemical or machine. Cost of chemicals and machines should be inclusive in activities mentioned in the schedule of unit rates. 22. Referring to the above clause 38, the Respondent/Revenue has held that the property in the chemicals/solvents used by the petitioner in the execution of the work has transferred to the Contractee.

23. In the impugned order, reliance has been placed on the judgment in the case of M/s Enviro Chemicals (Supra) of the Kerala High Court, wherein the majority relied upon the decision of the Supreme Court in Xerox Modicorp Ltd. v. State of Karnataka, (2005) 7 SCC380to hold that in the facts of the case, the property in the goods used for the execution of the contract passed to the Contractee WP(C)No.7843/2014 Page 9 of 21 and thus amounted to sale and was exigible to

tax.

24. The activity taken by the petitioner in relation to maintenance, cleaning, washing, housekeeping, waste management etc. is under a works contract. No doubt certain chemicals and solvents are used by the petitioner in the execution of the said contract but property in the said chemicals and solvents does not pass on to the Contractee. The use of chemicals and solvents is integral to the very execution of the works contract. The chemicals and solvents are not required by the Contractee for any purpose other than that for execution of the contract i.e. of cleaning, washing, housekeeping etc. The chemicals and solvents are of no independent use to the Contractee.

25. There is a distinction between consumables required for running an equipment and consumables required for servicing or maintaining an equipment. Take the example of a motor car. For running a motor car, petrol and Mobil oil are required and for servicing the car chemicals and solvents are required. Both are consumables but one is required for running the car and the other is required for servicing the car. Petrol and Mobil Oil which is required for running the car is not composite with the purpose of running of the car and the owner can also independently purchase the same for filling in the car. On the other hand chemicals and solvent required for servicing the car are integral and composite with the service of the car. WP(C)No.7843/2014 Page 10 of 21 26. With regard to petrol and Mobil oil, the moment they are poured in the motor car the property in them passes on to the owner of the motor car. Since property in them passes, the transaction of sale takes place. In contradiction, when a motor car is sent to a garage for the purposes of servicing, the garage owner uses chemicals and solvent for the purpose of cleaning and servicing the car. He may also change Mobil oil and add petrol. In so far as Mobil oil and petrol are concerned, there is no dispute that the moment they are poured in the car, the property in them passes. Even where some spare parts like bulbs etc. are changed, the moment they are affixed in the car, the property in them passes. However, the same cannot be said for the chemicals and solvent used by the garage owner for the pure purpose of servicing and cleaning the car. The chemicals and solvent that are used for the purpose of servicing and cleaning are consumables in the process of the service

of the car. They are completely consumed in the process of servicing. They are not separately identifiable and accordingly, the property in them does not pass on to the owner of the car.

27. Similarly, in the present case, the chemicals and solvent that are used for the purpose of cleaning, washing etc. and are integral part of the works contract. They are goods, which are integral for the very execution of the service contract and are consumables, that are completely consumed in the contract, and no property in them passes to the Contractee. WP(C)No.7843/2014 Page 11 of 21 28. It is this distinction that the Respondent/Commission VAT erred in not noticing in facts of the Judgments in Enviro Chemicals (Supra) and Xerox Modicorp Ltd (Supra).

29. In Enviro Chemicals (Supra), the dispute was with regard to the chemical product Envirofloc which was used as a chemical for effluent treatment. The

... Petitioner
, therein, was using the chemical Envirofloc for the treatment of effluent. The case of the

... Petitioner
was that since the chemical is completely used up in the process of effluent treatment, no transfer of property takes place.

30. The Majority in Enviro Chemicals (Supra) held as under: 13. After having considered the entire case law cited before us and on a conspectus of the provisions, we would think that the learned Special Government Pleader is right in his contention based on the decision of the Apex Court in Xerox Modicorp Ltd's case (supra). It is no doubt true that the contract as such is not placed before us, if it is one which is reduced to writing. But we will proceed on the basis that the process involved is substantially the same as has been indicated by the assessee and which we have extracted. It is undoubtedly true that even after the 46th amendment, sales tax cannot be levied merely because there is a works contract. There must be transfer of property in the form of goods or otherwise than in the form of goods. What is taxable is the transfer of property in goods (See the definition of sale in the Act in this regard). It does not matter whether the transfer

of property takes place in the form of goods or in any other form. It is undoubtedly also true that in view of the decision of the Apex Court in M/s. Gannon Dunkerley And Co. And Others v. State of Rajasthan And WP(C)No.7843/2014 Page 12 of 21 Others (1993 (1) SCC364 that the cost of consumables involved in works contract cannot be taxed.

14. That the chemical in question is goods, is beyond doubt. It cannot be disputed that the assessee was the owner of the goods in question, namely the chemical. It is obviously the intention of the parties that the assessee must use the chemical in the effluent treatment process. It is equally indisputable that the assessee has actually used it. No doubt, in the Judgment of the Apex Court in Xerox Modicorp Ltd. v. State of Karnataka ((2005) 142 STC209, the Apex Court found that the toners and developers are liquids put into the Xerox machine and they perform essentially the same function as ink in the printers and the Court also relied on the provision in the contract that the assessees in the said case would charge for the unaccounted stock at prevailing prices. By using the chemical, the effluent compliant with the standards. It could probably be said that in the case of the toner and developers as the function is that of ink in printers, it shows up in the final product of the xerox machines. But, the decision of the Apex Court is not based on there being any requirement that the items which are used should exist in any form in the resultant product which is the principle laid down by this Court in Teaktex Processing Complex Limited v. State of Kerala ((2004) 136 STC435 and also in Microtrol Sterilization Services Pvt. Ltd. v. State of Kerala ((2009) 26 VST213(Ker)). the petitioner/assessee rendered 15. We would think that the principle "quicquid plantatur solo, solo cedit" is a principle which is apposite in the context of a building and engineering contract. We get the following Account of the principle "quicquid plantatur solo, solo cedit": WP(C)No.7843/2014 Page 13 of 21 "The well-known principle is that the property in all materials and fittings, once incorporated in or affixed to a building, will pass to the free-holder quicquid plantatur solo, solo cedit. As soon as materials of any description are used in a building or other erection, they cease to be the contractor's property and become that of the free holder. The employer under a building contract may not necessarily be the free-holder, but may be a lessee or licensee, or even have no interest in the land at all, as in the case of a sub-contract. However, once the builder has affixed

materials, the property in them passes from him, and at least as against him, they become the absolute property of his employer, whatever the latter's tenure of or title to the lands. The builder has no right to detach them from the soil or building, even though the building owner may himself be entitled to sever them as against some other person - for example, tenant's fixtures. Nor can the builder reclaim them if the building owner or anyone else has subsequently severed from the soil. Materials worked by one, into the property of another, becomes part of that property. This is equally true whether it be fixed or moveable property. Bricks built into a wall becomes part of the house, thread stitched into a cost which is under repair, or planks and nails and pitch worked into a ship under repair, become part of the coat or the ship. Until, however, the materials are actually built into the work, in the absence of some stipulation intended to pass the property in them, when delivered on the site, they remain the property of the contractor, notwithstanding that they might have been approved by the employer or his agent or brought into the site unless the WP(C)No.7843/2014 Page 14 of 21 agreement between the parties evinces a clear intention to the contrary."

We would think that the said principle as such may not advance the case of the Revenue in a case where the works contract involves the effluent treatment process wherein chemical is poured into the effluent.

16. When the assessee has used it, will it remain the owner of the chemical any longer?. Will not the property in the goods pass to the awarder?. We would think that the moment the assessee pours the chemicals into the effluent, he will cease to be the owner and at that point of time the awarder must be deemed to have taken delivery of the same. In our view the fact that upon it being poured into the effluent, it loses its identity and that it is consumed will not detract from the fact that there is delivery of the same to the awarder. The assessee does not have a case that the effluent belongs to the assessee. We do not think that it can be their case that the effluent does not belong to the awarder. Let us pose a question, if a complaint by a third party is raised about the treated effluent, can the awarder absolve itself of the ownership of the same?. We would think, it may not be possible. Therefore we would be justified in holding that the effluent and the treated effluent both belonged to the awarder. It is, therefore, into the property of

the awarder, namely the effluent that the assessee supplies the chemical. The Apex Court in its decision in Gannon Dunkerley & Co. & Others v. State of Rajasthan & Others ((1993) 1 SCC364 had, inter alia, held that cost of consumables, such as, water, electricity, fuel etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract, is to be deducted. In Section 5C also, the words "not involving any transfer of property in goods" have been incorporated. Just like the toner and developer WP(C)No.7843/2014 Page 15 of 21 31. having been put into xerox machine becoming the property of the customer in the case before the Apex Court in Xerox Modicorp Ltd case and the sale taking place before the goods are consumed, in the same way, the property in the chemical passed to the awarder the moment they are put into the effluent by the assessee and its subsequent consumption is the consumption after sale and it does not detract from the factum of sale and consequently becomes unquestionable. exigibility the to tax (Underlining supplied) In Xerox Modicorp Ltd. v. State of Karnataka, (2005) 7 SCC380the Supreme Court held as under: 7. Even though at first blush the submissions of Mr Ganesh may appear attractive, on a proper consideration, we think that Mr Iyer was right when he submitted that the agreements are not just service contracts but also maintenance contracts. Mr Iyer is right that the machines belong to the customer after they are sold to them. If after the sale some part was to be replaced or some component supplied there would be sale as understood in law. Under the agreements, apart from the service element, for which no tax is sought to be levied, there is the element of supplying parts and components like toners/developers, etc. Mr Iyer is right in submitting that merely because price is not being separately charged for this, does not detract from the position that the supply is for a price. Such supply has all the elements of sale as understood in law. There is transfer of title in movables for a price. The mere fact that it is not known in the beginning whether or not a part will have to be replaced is irrelevant. If there were no such agreements, it would not be known whether or WP(C)No.7843/2014 Page 16 of 21 not a part would be required to be replaced. It could not be denied that, even in the absence of any such agreements, if a part was required to be replaced and was replaced there would be a sale of that part. The same position remains even under the agreements. As and when a part is

required to be and is replaced a sale takes place at that instance. To leave no room for doubt it must be mentioned that the tax is on sale. So if there is no replacement of a part then there is no sale of a part. So far as toners and developers are concerned it is known from the beginning that they will require regular replenishment. Under SSMA the customer buys them. Under FSMA they are replenished by the appellants. ***** ***** ***** 16. We have considered the rival submissions. As set out hereinabove the word consumable in Explanation I to Rule 6(4) refers to such items which get consumed before the property in the goods can pass. We are informed that toners and developers are liquids which are put in the Xerox machine. They perform, to put it simply, the same function as ink in printers. Under the Sale of Goods Act if specified goods in a deliverable state are delivered the property in the goods passes. It could not be disputed that the toner and developer will be delivered in bottles/containers. In FSMA supplies are left with the customer. Thus clause 9 of the section dealing with the customer's obligation provides as follows: The Customer shall be accountable to MX for xerographic supplies stock left in trust with the customer who shall ensure that such stock is used only in the equipment under this agreement. MX reserves the right to charge the customer for any stocks which are unaccounted to MX's satisfaction, at the then prevailing MX prices. for, WP(C)No.7843/2014 Page 17 of 21 Thus for the extra stock there is a provision which provides that it is left in trust. However once the toner and developer are put into the machine they are no longer in trust. This is because the property in the toner and developer passed the moment they are put into the Xerox machine. Now they belonged to the customer. At this stage they are tangible movables in which property can pass. This is clear from the provision that the appellants will charge for unaccounted stock at prevailing prices. That they are goods in which property can pass is also clear from the fact that in SSMA the customer has to buy the toner and developer. If as now claimed they are consumables in which property cannot be transferred how are the appellants charging for toners and developers. In our view, Mr Iyer is right. The sale i.e. transfer of property takes place before the goods are consumed. The transfer takes place in respect of tangible goods. Just like petrol is consumed after sale or ink is consumed after sale in this case also the toners and developers get consumed after sale. The property passes the moment they are put in the

machine. At that stage they are not consumed but are tangible goods in which property can pass. (Underlining supplied) 32. In both Enviro Chemicals (Supra) and Xerox Modicorp Ltd (Supra), the courts were not dealing with the goods which were integral to the service contract and which were completely consumed during the execution of the service contract. The goods were consumed for the purposes of the final output i.e. chemical treatment of effluent water (Enviro Chemicals) and spare parts and Toners and WP(C)No.7843/2014 Page 18 of 21 Developers (Xerox Modicorp Ltd.). The Courts were not concerned with goods (soaps/detergent/chemical/solvent) as in the present case which are consumed in the process of cleaning.

33. In the present case the contract inter alia requires the petitioner to perform the task of Mechanized scrubbing of shed floor to keep it free from muck / grime arising due to dropping of oil / grease / effluents and industrial waste by using biodegradable floor chemicals / solvent. Mechanized scrubbing by floor scrubbing / scarifying machine, removal of industrial waste along with muck, unwanted / useless and dumping the same at the nominated place within the shed complex. Cleaning of floor of main shed, SMM store, Lab & Administrative block to keep it free from dropping of oil / grease / grime / effluent including removal of cobwebs from covered area. Cleaning of DEMU Care Centre, DEMU Block and Diesel Training Centre SSB to keep it free from dropping of oil / grease / grime / effluent including removal of cobwebs from covered area. Cleaning of rooms, veranda, etc. of Lab, Administrative block and offices of Sr. Subordinate Super-visors with wiping by wet and dry moppers. Cleaning of rooms, veranda, etc. of DEMU Block and Diesel Training Centre SSB with wiping by wet and dry moppers. To keep floor, side walls of inspection pits free from muck / grime / arises due to dropping of oil / grease / effluents and industrial waste by using high-pressure cold / hot jet cleaner. Removal of unwanted industrial waste and dumping the same at the nominated place within the shed WP(C)No.7843/2014 Page 19 of 21 complex. To keep floor, side walls of DEMU Care Centre pits free from muck / grime / arises due to dropping of oil / grease / effluents and industrial waste by using high-pressure cold / hot jet cleaner. Cleaning of toilets by high-pressure water jet cleaner, removal of silt and muck from urinals. Loco Washing / cleaning of Pit wheel lathe machine complex to keep it free from dropping of oil / grease / grime /

effluent / Waste metal chips including removal of cobwebs from covered area.

34. The soaps, detergent, chemicals and solvent used purely for the purposes of cleaning and which are completely consumed, in the process of the execution of the above referred tasks, cannot by any stretch of imagination be said to goods in which property could pass to the Contractee. Similarly, water is also used in the above-referred process of cleaning and execution of the contract. Can it be said, that even property in water, that is used and consumed in the said process of cleaning and execution of the contract, is also transferred to the Contractee and the value of the water consumed should be exigible to tax.

35. The mere fact that soaps, detergent, chemicals and solvents are deposited in the store of the Contractee would not make any difference to the exigibility, as is sought to be contended by the Revenue/respondents, because, admittedly, by mere deposit in the store, the property in them is not stated to pass. It is contended by the Revenue/Respondent, that the property passes when they are actually WP(C)No.7843/2014 Page 20 of 21 used. The

... Petitioner
s and the Railways have contended that the said soaps/detergent/chemical/solvent are deposited with the Railways and issued from their store to ensure that adequate quantity is used by the petitioner for the execution of the awarded work.

36. In view of the above, we hold that, the property in the consumable chemicals used in the process of cleaning does not transfer to the Contractee/Railways and accordingly the said goods are not exigible to tax. Since the said goods are not exigible to tax, the Contractee/Railways is not liable to deduct Tax at Source and the Commissioner VAT is liable to grant a certificate for NIL deduction of Tax Deducted at Source.

37. Accordingly, the impugned order dated 30.06.2014 is set aside. The Commissioner VAT is directed to issue the certificate of NIL deduction of tax at source.

38. The Writ Petition is disposed of in the above terms. No costs. February 15 , 2017 rs/HJ WP(C)No.7843/2014 SANJEEV SACHDEVA, J.

BADAR DURREZ AHMED, J.

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