APHC010303412020

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3508]**
(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 20096/2020

Between:

Sterling And Wilson Private Limited **...PETITIONER**

AND

The Joint Commissioner and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. MURALI BABU DOMA

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX

Court made the following Order:

(per Hon'ble Sri Justice, R. Raghunandan Rao)

Heard Sri N. Govind Reddy, learned counsel appearing for the petitioner and learned Government Pleader for Commercial Tax, appearing for the respondents.

2. The petitioner, who is engaged in the business of setting up of Solar Power Plants, had been paying GST @ 5% of its turnover. As the rate of GST on the inputs, obtained by the petitioner, was higher than the GST rate of finished goods, the petitioner, invoking the provisions of Section 54 of the A.P. Goods and Services Tax Act, 2017 (for short 'the GST Act'), claimed refund of a sum of Rs.8,65,63,538/-, for the period January, 2018 to March, 2018,

3. This application was rejected and became the starting point of a fresh enquiry, for assessment of tax, for the period 30.11.2017 to 30.09.2018. The Assessing Authority issued a show cause notice, dated 17.09.2019, proposing to assess the turnover of the petitioner @ 18%, on the ground that the transactions undertaken by the petitioner are Works Contract, as defined under Section 2(119) of the GST Act. The petitioner objected to the same, on the ground that the activities of the petitioner would have to be treated as composite supply, as defined under Section 2(30) of the GST Act, attracting GST @ 5% on the turnover. This contention of the petitioner was rejected and the Assessing Authority assessed the turnover of the petitioner @18% and raised a tax demand for Rs.63,00,19,512/- (CGST of Rs.31,50,09,756/- and SGST of Rs.31,50,09,756/-) and a penalty of Rs.63,00,19,512/-.

4. Aggrieved by this order, dated 20.11.2019, the petitioner moved an appeal before the 1st respondent. The 1st respondent, after hearing the petitioner, by her order, dated 20.10.2020, bearing No.ZH371020OD19206, rejected the appeal to the extent of the assessment of tax and interest payable on the said tax. However, the penalty of Rs.63,00,19,512/- levied under Section 74 of the GST Act by the 2nd respondent-Assessing Authority was set aside and penalty of Rs.6,30,01,952/- was levied under the provision of Section 73 of the CGST Act.

5. Aggrieved by the same, the petitioner had approached this Court, by way of the present Writ Petition, contending that the remedy of appeal, to the Tribunal, constituted under the GST Act is not available as no Tribunal has been constituted.

6. This Writ Petition was initially disposed of by this Court, by an order, dated 25.11.2022, holding that the rate of tax could be ascertained on the basis of Circular No.163/19/2021-GST, dated 06.10.2021, and remanded the matter back to the Appellate Authority.

7. Subsequently, the petitioner again moved I.A.No.1 of 2024 contending that the said circular has not been notified and as such, was not available for adjudication. The learned Government Pleader for Commercial Taxes accepted this contention. In that view of the matter,

the review application filed by the petitioner was allowed, by an order, dated 20.09.2024, and the matter was taken up for fresh hearing.

8. Sri N. Govind Reddy, learned counsel for the petitioner, would contend that the Appellate Authority, after accepting that the transactions of the petitioner would amount to composite supply of services, falling under Section 2(30) of the Central Goods & Services Tax Act, 2017 (for short 'the CGST Act'), had erred in holding that the transactions would also fall under the ambit of works contract, as defined under Section 2(110) of the CGST Act. The learned counsel for the petitioner would submit that the 2nd respondent-Appellate Authority, taking into account various extraneous factors, had come to the conclusion that the supply of goods, by the petitioner, was a part of construction of immovable property. The learned counsel for the petitioner submits that the said finding is clearly not based on any facts and on misinterpretation of the provisions of the Transfer of Property Act.

9. The respondents have filed a counter affidavit disputing and denying the grounds raised by the petitioner. The learned Government Pleader for Commercial Taxes, relying upon the counter affidavit, on behalf of the respondents, would submit that the terms of the contract executed between the petitioner and his customers and the final shape of the project, after completion of execution of the project would make it

amply clear that the goods in the nature of Solar modules etc., supplied by the petitioner, in the course of the composite supply of goods, results in an immovable structure and consequently it would have to be treated as falling under the heading “works contract”, as defined in Section 2(119) of the CGST Act.

10. The learned counsel for the petitioner, in reply, would contend that projects of solar plants, fall within the ambit of the explanation in Sl.No.234 of Notification No.01/2017-CT(Rate) dated 28.06.2017 and Sl.No.38 of Notification No.11/2017-CT(Rate) and the same would result in tax being levied @ 5%.

11. The learned counsel for the petitioner would also rely upon the decisions of Hon’ble Apex Court in **Sirpur Paper Mills Limited v. The Collector of Central Excise[1]; Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works[2]; Sri Velayuthaswamy Spinning Mills (P) Ltd v. The Inspector General of Registration and Ors[3]; Vodafone Mobile Services Limited v. Commissioner of Service Tax, Delhi[4]**; and **I.G.E. (India) Limited v. Collector of Central Excise[5].**

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[1] **(1998) 1 SCC 400**
[2] **(2010) 5 SCC 122**
[3] **MANU/TN/0164/2013:2013(2) CTC 551**
[4] **(2018) 100 Taxmann.com 245 (Delhi)**
[5] **(1990) Taxmann.com 492 (Cegat-New Delhi)**

12. The learned Government Pleader, on the other hand, relies upon the Judgment of the Hon'ble Supreme Court in **Duncan Industries Limited vs. State of Uttar Pradesh and Ors**[6]**,** to contend that any machinery embedded in the earth on permanent basis would have to be treated as immoveable property and cannot be treated as movable property.

Consideration of the Court:

13. Before going into the issues which arise in this writ petition, it would be necessary to consider the scheme of the GST regime by looking at the CGST Act. Section 9 of the Act, which is charging section, provides for levy of tax, on supplies of goods or services or both, with the exception of supply of alcoholic liquor for human consumption. The chargeable event is the "supply of goods or services". The term "supply" is not contained in the definitions provision of Section 2 of the Act. However, Section 7 provides for an inclusive meaning of "supply" in the following manner:

> 7. **Scope of supply**.— (1) For the purposes of this Act, the expression "supply" includes—
>
> (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a

[6] **(2000) 1 SCC 633**

consideration by a person in the course or furtherance of business;

(clauses “(aa) to (c)” are not germane for our purpose)

14. Section 7(1)(a) states that supply could be supply of goods or supply of services or supply of both goods and services. For the purpose of taxing such combined supply, the term composite supply was defined in Section 2(3) of the Act, in the following manner:-

2(30) — “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

15. In the present case, the central issue is whether the transactions in question should be treated as simple composite supplies or as works contract.

16. Note – 6, of the II Schedule, of the Act, states as follows:

6. **Composite supply**:-

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

17. Though Section 9 is the main charging provision, the legislature, inserted Section 8, in the Act, for determining tax liability of composite or mixed supply of goods and services in the following manner:-

Section-8. Tax liability on composite and mixed supplies.— The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

18. It would also be necessary to notice the definition of “Works Contract” as contained in Section 2(119) of the Act, which reads as follows:-

> **Section 2(119)** — "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

19. A conjoint reading of Section 2(30), Section 2(119), Section 7 and Note-6 of II Schedule to the Act would reveal that a "works contract" is also a composite supply. However, there could be a "composite supply", which does not fall within the ambit of "works contract". Section 2(30) defines "composite supply" to mean a combination of two or more types of services or two or more types of goods or a combination of goods and services or any combination thereof. The definition of a "composite supply" is similar to the concept of "works contract", as defined under the earlier sales tax laws. In both contracts there is a supply of both goods and services. The question that would arise is what kind of composite contract would amount to only a works contract and what are those combined contracts which answer the description of "composite supply" but would still fall outside the ambit of works contract. The answer is available in the definition of works contract, in Section 2(119), which stipulates that a composite supply of goods and services, which results in the construction etc., of immoveable property, is a works

contract. Thus the distinction between 'works contract' and a 'composite supply' would be whether the end product handed over to the contractee, is moveable or immoveable property.

20. In the present case, the petitioner contends that the Solar Power Generating, that was supplied by the petitioner, is a moveable property and the transaction would be a composite supply. The revenue contends that the Solar Power Generating System established by the petitioner is immoveable property, which would fall within the ambit of the definition "works contract" under Section 2(119).

21. If the Solar Power Generating System is to be treated as a moveable property, it would have to be taxed under Entry 234 of Notification 1/2017-Central tax (Rate), dated 28.06.2017, at the rate of 2.5% CGTST and 2.5% SGST. The rate of tax in such a case is not disputed by either side.

22. If the supply of Solar Power Generating System is to be treated as work contract, the same would be taxable as "General Construction Services of power plants and its related infrastructure with SAC Code 995426 with effect from 28.06.2017.

23. The Hon'ble Supreme Court in **T.T.G. Industries Ltd., Madras vs. Collector of Central Excise, Raipur**[7], while considering the

[7] (2004) 4 SCC 751

question of whether the supply of hydraulic mudguns and tap hole-drilling machines required for blast furnaces would be exigible to tax under the Central Excise Act, after considering the nature of the machinery and its usage, had held that such machinery erected at the site of the purchaser would amount to immoveable property, which could not be shifted without dismantling it and re-erecting it at another site.

24. In a subsequent judgment of **Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works**, the Hon'ble Supreme Court went into the question of what would amount to moveable property and what would amount of immoveable property in the following manner.

> **21.** The expression "movable property" has been defined in Section 3(36) of the General Clauses Act, 1897 as under:
>
> > "3. (36) 'movable property', shall mean property of every description, except immovable property;"
>
> From the above it is manifest that the answer to the question whether the plants in question are movable property, would depend upon whether the same are immovable property. That is because anything that is not immovable property is by this very definition extracted above "movable" in nature.
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> **22.** Section 3 of the Transfer of Property Act, 1882 does not spell out an exhaustive definition of the expression "immovable property". It simply provides that

unless there is something repugnant in the subject or context, “immovable property” under the Transfer of Property Act, 1882 does not include standing timber, growing crops or grass. Section 3(26) of the General Clauses Act, 1897 similarly, does not provide an exhaustive definition of the said expression. It reads:

> “3. (26) ‘immovable property’ shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;”

23. It is not the case of the respondents that plants in question are *per se* immovable property. What is argued is that they become immovable as they are permanently imbedded in earth inasmuch as they are fixed to a foundation imbedded in earth no matter only 1½ ft deep. That argument needs to be tested on the touchstone of the provisions referred to above.

24. Section 3(26) of the General Clauses Act includes within the definition of the term “immovable property” things attached to the earth or permanently fastened to anything attached to the earth. The term “attached to the earth” has not been defined in the General Clauses Act, 1897. Section 3 of the Transfer of Property Act, however, gives the following meaning to the expression “attached to the earth”:

“(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;"

25. It is evident from the above that the expression "attached to the earth" has three distinct dimensions viz. (*a*) rooted in the earth as in the case of trees and shrubs, (*b*) imbedded in the earth as in the case of walls or buildings, or (*c*) attached to what is imbedded for the permanent beneficial enjoyment of that to which it is attached. Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1½ ft deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth under any one of the three clauses extracted above. That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation. So also the attachment of the plant to the foundation at which it rests does not fall in the third category, for an attachment to fall in that category it must be for permanent beneficial enjoyment of that to which the plant is attached. It is nobody's case that the attachment of the plant to the foundation is meant for permanent beneficial enjoyment of

> either the foundation or the land in which the same is imbedded.

25. The Hon'ble Supreme Court also considered the judgment in **Sirpur Paper Mills Limited v. The Collector of Central Excise**, and more specifically paragraph-5 of the said judgment in the following manner:

> "*5*. Apart from this finding of fact made by the Tribunal, the point advanced on behalf of the appellant, that whatever is embedded in earth must be treated as immovable property is basically not sound. For example, a factory owner or a householder may purchase a water pump and fix it on a cement base for operational efficiency and also for security. That will not make the water pump an item of immovable property. Some of the components of the water pump may even be assembled on site. That too will not make any difference to the principle. The test is whether the paper-making machine can be sold in the market. The Tribunal has found as a fact that it can be sold. In view of that finding, we are unable to uphold the contention of the appellant that the machine must be treated as a part of the immovable property of the Company. Just because a plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property."

26. On the basis of the above principles, the Hon'ble Supreme Court had taken the view that the machinery, in question in that case, was moveable, in the following manner:

> **44.** In the instant case all that has been said by the assessee is that the machine is fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth but because a foundation was necessary to provide a wobble free operation to the machine. An attachment of this kind without the necessary intent of making the same permanent cannot, in our opinion, constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. In that view of the matter we see no difficulty in holding that the plants in question were not immovable property so as to be immune from the levy of excise duty. Our answer to Question 1 is accordingly in the affirmative.

27. It may also be noticed that the Hon'ble Supreme Court also considered the judgment in **T.T.G. Industries Ltd., Madras vs. Collector of Central Excise, Raipur**, and held that the said judgment had come to be passed, on the basis of the facts in that case and had distinguished it on facts.

28. The learned Government Pleader had also relied upon the judgment of the Hon'ble Supreme Court in **Duncan Industries Limited vs. State of Uttar Pradesh and Ors.** In this case, there was a transfer of the Fertilizer business of the vendor, as an on going concern. For the purpose of completing the transaction a conveyance deed was executed for transferring the factory premises. The stamp duty authorities sought to

include the cost of the plant and machinery, for the purpose of fixing the stamp duty. The vendor and the purchaser contended that the said machinery was moveable property, which is not included in the deed of conveyance and as such the value of the plant and machinery could not have been included for the purpose of calculating the stamp duty payable on the deed of conveyance. When the matter went up before the High Court, a view was taken that the plant and machinery was immoveable property. Aggrieved by this view, the parties approached the Hon'ble Supreme Court. The Hon'ble Supreme Court, after recording the finding of the High Court that the plant and machinery were permanently embedded in the earth with an intention of running the fertilizer factory and that there was no intention to remove the same for the purpose of sale, had held that the plant and machinery would have to be treated as immoveable property.

29. The judgment of the Hon'ble Supreme Court in **Sirpur Paper Mills Limited v. The Collector of Central Excise,** was cited before the Hon'ble Supreme Court. The Hon'ble Supreme Court took the view that the principles laid down in the judgment in **Sirpur Paper Mills Limited v. The Collector of Central Excise,** would not be applicable, as facts and circumstances pertaining to that case, were different. The Hon'ble Supreme Court accepted the finding by the High Court that the machinery

was permanently embedded in the earth and that there was no intention to remove the plant and machinery for the purpose of any sale. The view of the Hon'ble Supreme Court, in this regard, is set out below:

> **8.** Considering the question whether the plant and machinery in the instant case can be construed as immovable property or not, the High Court came to the conclusion that the machineries which formed the fertilizer plant, were permanently embedded in the earth with an intention of running the fertilizer factory and while embedding these machineries the intention of the party was not to remove the same for the purpose of any sale of the same either as a part of a machinery or scrap and in the very nature of the user of these machineries, it was necessary that these machineries be permanently fixed to the ground. Therefore, it came to the conclusion that these machineries were immovable property, which were permanently attached to the land in question. While coming to this conclusion the learned Judge relied upon the observations found in the case of *Reynolds* v. *Ashby & Son* [1904 AC 466 : 73 LJ KB 946] and *Official Liquidator* v. *Sri Krishna Deo* [AIR 1959 All 247 : (1959) 29 Comp Cas 476] . We are inclined to agree with the above finding of the High Court that the plant and machinery in the instant case are immovable properties. The question whether a machinery, which is embedded in the earth is moveable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties (*sic* party) when it decided to embed the machinery,

whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertilizer plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertilizer plant. The description of the machines as seen in the schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertilizer plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertilizer at various stages of its production. Hence, the contention that these machines should be treated as moveables cannot be accepted. Nor can it be said that the plant and machinery could have been transferred by delivery of possession on any date prior to the date of conveyance of the title to the land. Mr Verma, in support of his contention that the machineries in question are not immovable properties, relied on a judgment of this Court in *Sirpur Paper Mills Ltd.* v. *CCE* [(1998) 1 SCC 400] . In the said case, this Court while considering the leviability of excise duty on paper-making machines, based on the facts of that case, came to the conclusion that the machineries involved in that case did not constitute immovable property. As stated above, whether machinery, embedded in the earth, can be treated

as moveable or immovable property depends upon the facts and circumstances of each case. The Court considering the said question will have to take into consideration the intention of the parties which embedded the machinery and also the intention of the parties who intend alienating that machinery. In the case cited by Mr Verma, this Court in para 4 of the judgment had observed thus: (SCC p. 402)

> "In view of this finding of fact, it is not possible to hold that the machinery assembled and erected by the appellant at its factory site was immovable property as something attached to earth like a building or a tree. The Tribunal has pointed out that it was for the operational efficiency of the machine that it was attached to earth. If the appellant wanted to sell the paper-making machine it could always remove it from its base and sell it."

30. The petitioner describes, the establishment of the Solar Power Generating System, in the following manner:-

ii. Solar power generators are used to convert solar energy into electricity. This solar energy is captured into solar modules, which is the most important element of a SPGS and forms approximately 60-70% of the contract value. This solar energy is transformed into electricity and either transmitted to an electricity grid or stored in a battery.

iii. Solar modules are arranged in panels and for optimum utilization, these panels are mounted on top of trackers.

These trackers move the panels along the direction of the sun to capture maximum solar energy. These trackers are placed on a civil foundation, which is required to give a steady platform to the modules and the trackers.

iv. Other than supply and installation of the generator, the appellant generally also undertakes a few civil works for the customers which are an integral part for making the system operational and form a part of the entire contract value. Sample copy of agreement between the appellant and FRV Andhra Pradesh Solar Farm-I Pvt. Ltd., (referred to as 'Developer' in the agreement) is attached as **Annexure 7**. Appellant has been referred to as "Contractor' in the said contract.

31. The description of Solar Power Generating System, by the appellate authority, is as follows:

"It is evident from the said activities that the project has an element of permanence. But the appellant had taken a different stance by furnishing certain photographs of the project and stating that the solar modules/panels are merely fitted with nuts and bolts on mounting structure and claimed that it is a movable property. This presentation of the issue is in clever manner but not in bona fide manner in view of the fact that the very mounting structure is embedded permanently to the earth by civil foundation and support. In fact the solar modules are fixed on civil foundation and the degree/mode of annexation has the character of permanence and immovability. As it involves permanent beneficial enjoyment of the land to which the power plant is installed, it satisfies the condition of things

embedded in the earth. Therefore, the contention of the appellant that the project is movable is incorrect.

Further it is evident from the above, that the present work of installation of the Solar Power Generating System is not as simple or movable as it is made out to be. It is an entire system comprising a variety of different structures which are installed after a lot of prior work which involves detailed designing, ground work and soil survey. Solar Power Systems tend to be tailored specifically to fit the dimensions and orientation of the needs of the project. It is not easy to move them from one place to the other. Rather moving them from one place to other would be unwise. Thus, the project fulfils both the conditions of an immovable property – The mode of annexation shows that the groundwork, being the necessary foundation, is an important part of the project. The object of annexation, cannot be to make it movable from one place to the other. In the present case, based on the photographs submitted by the appellant the detailing of the system being what it is, it cannot be called a 'simple machine' by any stretch of imagination. The solar panel modules may be an important part of the system but what is intended to be bought is not the solar panel modules but an entire system. Thus, it can be concluded that the contract entered into, lead to the erection of a **Solar Power Generating System, which is immovable in nature**.

Thus the instant case satisfies the condition of "**immovable property**" and falls under the purview of works contract, which is essentially a service and rate of tax shall be determined in accordance with notification

> No.11/2017 CT (Rate), dated 28.06.2017 as amended from time to time.
>
> In the present case, the contract entered by the appellant is composite supply of works contract as defined at Section 2 (119) of CGST Act 2017 and is treated as supply of service in terms of serial No.6, Schedule II of GST Act, 2017. It falls under heading 9954, entry No.(ii) of S.No.3 of the table of notification No.11/2017 – Central Tax (Rate), dated – 28th June 2017 as amended from time to time and **the applicable rate of tax is 18% (9% under Central tax and 9% State tax**).

32. The description of the Solar Power Generating System, set out by the petitioner, is not disputed by the appellate authority. However, the appellate authority went on to hold that the Solar Power Generating System would be immoveable property on the following grounds, which can be extracted from the passage from the order of the appellant authority, as set out above:

> 1. Though the power generating system is fitted with nuts and bolts on the mounting structure, it would be immoveable as the very mounting structure is embedded in the earth.
> 2. The solar modules are fixed with a character of permanence and immovability and cannot be treated as moveable property.
> 3. The fixation of the solar modules on the civil foundation is for the permanent beneficial and enjoyment of the land on

which power plant is set up and the same satisfies the condition of property embedded in the earth.

33. The Hon'ble Supreme Court in **Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works**, had set out the guidelines for deciding whether property would be moveable or immoveable. In the passage extracted above, the Hon'ble Supreme Court, after considering the provisions of the General Clauses Act, 1897 as well as the Transfer of Property Act, 1882, had held that things attached to the earth would be immoveable property. However, Section 3 of the Transfer of Property Act clarifies that this term would apply to trees and shrubs; buildings or goods embedded in the earth; and things, which are attached to what is embedded in the earth, for the permanent beneficial enjoyment of the structure embedded in the earth.

34. In the present case, the solar power plant is not trees or shrubs, which are rooted in earth or a structure embedded in the earth. The appellate authority also accepts that the solar power module is attached to the civil foundation, which is embedded in the earth. The property, which is attached to a structure embedded in the earth, would also become immoveable property only when such attachment is for the permanent beneficial enjoyment of the structure, which is embedded in the earth. In this case, the civil foundation is embedded in the earth.

However, the solar modules and the Solar Power Generating System have not been attached to the civil structure for the purpose of better enjoyment or beneficial enjoyment of the civil foundation. On the contrary, the civil foundation has been embedded on earth for better permanent and beneficial enjoyment of the Solar Power Generating Station.

35. Applying the aforesaid test, it must be held that the property in question, viz., the Solar Power Generating System would not answer the description of immoveable property. The transaction in question would not fall within the meaning of “works contract” as defined under Section 2(119) of the GST Act.

36. However, the appellate authority relied upon the judgment of the Hon’ble Supreme Court in **Duncans Industries Limited vs. State of Uttar Pradesh and Ors.,** wherein the Hon’ble Supreme Court had taken the view that any property embedded in the earth with an intention of keeping the same embedded permanently, would have to be treated as immoveable property. This view was taken by the Hon’ble Supreme Court, on the finding of the High Court that the plant and machinery, in that case, was embedded in the earth. The Hon’ble Supreme Court also held that the earlier judgment in **Sirpur Paper Mills Limited v. The Collector of Central Excise** would not be applicable as the facts are different.

37. In **Duncans Industries Limited vs. State of Uttar Pradesh and Ors.,** there is a finding of fact, by the Hon'ble High Court that the plant and machinery in question was embedded in the earth. This finding was accepted by the Hon'ble Supreme Court. On this basis, the Hon'ble Supreme Court went on to consider the question of whether the embedment of the plant and machinery was for a permanent purpose or not. The Hon'ble Supreme Court did not apply the dictum in **Sirpur Paper Mills Limited v. The Collector of Central Excise**, inasmuch as there was a finding in **Sirpur Paper Mills Limited v. The Collector of Central Excise,** that the property in question was not embedded to the earth.

38. Applying the principles set out in **Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works**, it must be held that the property in question is not embedded in the earth to bring it within the meaning of immoveable property. Once it is held not to be embedded, the question of whether it is a permanent embedment or not, would not arise.

39. In this view of the matter, it must be held that the supply of the Solar generating Power Station, is a composite supply, it would not amount to a works contract.

40. Accordingly, this writ petition is allowed and the impugned order bearing No.ZH3710OD19206, dated 20.10.2020 passed by the 1st respondent is set aside. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

R.RAGHUNANDAN RAO, J.

MAHESWARA RAO KUNCHEAM, J.

Rjs/Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

&

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

WRIT PETITION NO: 20096 of 2020

(per Hon'ble Sri Justice R. Raghunandan Rao)

____ January, 2025

Rjs/Js