IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3600 of 2020

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Ircon International Ltd., a Company incorporated Under the Companies Act 1956 having its Office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its Project Director Pramod Kumar Singh (Male) aged about 57 Years) Son of Late Dina Nath Singh, Resident of Flat No. 304, Suresh Apartment, Ram Krishna Path P.O. and P.S. North S.K. Puri, Boring Road District-Patna.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. Asst. Commissioner of State Tax, Patna West Circle, Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 11625 of 2019

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Ircon International Ltd., A Company incorporated under the companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna, through its General Manager Sandeep Sinha Son of Late Satya Deo Narayan Sinha, resident of Flat No. 504, Chandra Regency, Viveka Nand Marg P.O. and P.S.- Shree Krishna Puri, District- Patna.

... ... Petitioner

Versus

1. The State of Bihar Through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Asst. Commissioner of State Tax Patna West Circle, Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 1716 of 2023

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Ircon International Ltd., a company incorporated under the Companies Act 1956 having its office at Sone Annexe Bhawan, Bir Chand Patel Path, Patna through its General Manager Santanu Mukherjee (Male 57 Years) son of Shri. Shailendra Nath Mukherjee, Flat No.- 2NN, Block-1 Srijukta, S D Tower, Prafulla Kannan, Krishna Pur, North 24 Parganas, West Bengal- 700101.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Asst. Commissioner of State Tax, Patna West Circle, Patna.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 3600 of 2020)
For the Petitioner : Mr. Tarun Gulati, Sr. Advocate
Mr. D.V.Pathy, Sr. Advocate

		Mr. Siddhartha Prasad, Advocate
		Mr. Pramod Kandpal, Advocate
		Mr. Sadashiv Tiwary, Advocate
		Ms. Shivani Dewella, Advocate
		Mr. Hiresh Karan, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 11625 of 2019)		
For the Petitioner	:	Mr. Tarun Gulati, Sr. Advocate
		Mr. D.V.Pathy, Sr. Advocate
		Mr. Siddhartha Prasad, Advocate
		Mr. Pramod Kandpal, Advocate
		Mr. Sadashiv Tiwary, Advocate
		Ms. Shivani Dewella, Advocate
		Mr. Hiresh Karan, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 1716 of 2023)		
For the Petitioner	:	Mr. Tarun Gulati, Sr. Advocate
		Mr. D.V.Pathy, Sr. Advocate
		Mr. Siddhartha Prasad, Advocate
		Mr. Pramod Kandpal, Advocate
		Mr. Sadashiv Tiwary, Advocate
		Ms. Shivani Dewella, Advocate
		Mr. Hiresh Karan, Advocate
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 25-02-2026

There are seven writ applications listed together for hearing. At the outset, learned counsel for the petitioners as well as the State have jointly submitted that the three writ applications, i.e. CWJC No. 3600 of 2020, CWJC No. 11625 of 2019, and CWJC No. 1716 of 2023, are required to be heard together as they involved identical questions for adjudication.

2. Learned counsel(s) have pointed out the order dated 17.02.2023, wherein the joint submissions of the parties have been recorded by the then learned coordinate Bench. So far as the other four writ applications (CWJC No. 3800 of 2019, CWJC No. 13258 of 2019, CWJC No. 13286 of 2019 and CWJC No. 13854 of 2019) are concerned, they do not involve the same legal issues but were ordered to be listed next below the above three cases. It has been submitted that the fate of those four writ applications should depend upon the result of the three writ applications. Therefore, this Court would consider the other four writ applications together.

3. Heard Mr. Tarun Gulati, learned Senior Counsel and Mr. D.V. Pathy, learned Senior Counsel in all the writ applications and Mr. Vikash Kumar, learned SC-11 for the State. Parties have also filed their respective written notes of submissions which have been taken on record.

4. On the request of the learned counsel for the parties, CWJC No. 3600 of 2020 has been taken as the lead case. This Court would, however, reproduce the prayers made in all the writ applications hereunder for a ready reference:-

<u>CWJC No. 3600 of 2020</u>

5. The petitioner in this writ application is seeking the following reliefs:-

> "i) the show cause notice dated 23.11.2018 issued by the respondent no. 2 under section 31 of the Bihar Value Added Tax Act, 2005 be quashed.
> ii) the order dated 09.01.2020 (as contained in Annexure-7 series) passed by the respondent no. 2 for the period 2014-15 under section 31 of the Bihar Value Added Tax Act, 2005 be quashed.
> iii) the notice of demand dated 25.01.2020 (as contained in Annexure-7 series) issued by the respondent no. 2 in pursuance of the order of assessment be quashed.
> iv) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

6. The petitioner in **CWJC No. 11625 of 2019** is seeking the following reliefs:-

> "i) the order dated 03.03.2019 (as contained in Annexure- 6 Series) passed by the respondent no. 2 for the period 2013-14 under section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter called the Act) be quashed.
> ii) the notice of demand dated 30.03.2019 (as contained in Annexure- 6 Series) issued by the respondent no. 2 in pursuance of the order of assessment be quashed.
> iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

7. The petitioner in **CWJC No. 1716 of 2023** is seeking the following reliefs:-

> "i) the order dated 28.09.2022 (as contained in Annexure- 5 Series) passed by the respondent no. 2

for the period 2016-17 under Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter called the Act) be quashed.

ii) the notice of demand dated 28.09.2022 (as contained in Annexure- 5 Series) issued by the respondent no. 2 in pursuance of the order of assessment by quashed.

iii) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

Brief Facts of the Case (CWJC No. 3600 of 2020)

8. The petitioner is a Public Limited Company engaged in execution of works contract. It was awarded a contract for construction of steel super structure and other ancillary works of rail, road, bridge across river Ganga at Patna by the Central Railways. A copy of the contract dated 10.02.2009 has been brought on record as Annexure '2' to the writ application. The contract comprises of Schedule A-I, A-II, Schedule B, Schedule C-II and Schedule C-III. Schedule A is in respect of fabrication; Schedule B is for contingency items; Schedule C-I is for supply of cement; Schedule C-II is for supply of reinforcement steel and Schedule C-III is for supply of structural steel.

9. It is the case of the petitioner that in terms of the contract and the letter of award, the petitioner submitted its bills to the East Central Railway (the contractee) and the contractee paid in terms of the bills so raised.

10. The petitioner filed its return for the period 2014-15 together with the audit report in which it claims to have made true and fair disclosure of its turnover and deductions and paid the taxes accordingly. A copy of the return for the period 2014-15 along with tax audit report has been brought on the record.

11. The Assistant Commissioner of State Taxes, Patna, West Circle, Patna (respondent no.2) issued a notice under Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'Act of 2005') to show cause as to why the petitioner be not reassessed on the ground *inter alia* that evidence in support of claim of deduction on account of labour amounting to Rs.2,06,58,23,291/- and evidence in respect of input tax credit amounting to Rs.45,81,045/- was not filed. The respondent no. 2 issued reminders and mentioned the gist of accusations in the notice according to which the petitioner had imported goods from outside the State of Bihar but had not furnished reconciliation in respect thereof.

12. In compliance with the notice, the petitioner stated *inter alia* that the deduction of Rs.2,03,06,73,605.52/- is relatable mainly to fabrication, transportation, erection of steel structure, cutting, straightening, testing of steel structure forming part of labour, the liability to pay tax under the BVAT, 2005 is on transfer

of property in goods in execution of works contract, iron and steel fall within the description of goods of special importance as declared in Section 14 of the Central Act and liable to tax at the rate of 5%. In view of the embargo in Article 286(3) of the Constitution of India the levy of tax under the BVAT, 2005 has to be equal to the rate specified in Section 14 of the Central Act, fabrication being exclusively a component of labour do not form part of the cost of steel structure supplied in the execution of the contract, there is no transfer of property in goods in the component of fabrication and that the condition precedent for the exercise of jurisdiction under Section 31 of the BVAT, 2005 are conspicuous by its absence. The petitioner also produced evidence in support of the expenses on account of labour and payment of sub-contractors along with copy of agreements etc.

13. After submission of reply to the show cause, Respondent No. 2 held that the steel structure is an unspecified goods and is liable to tax at the rate of 13.5% instead of 5%, the expenditure incurred in the conversion of structural steel into steel structure forms part of the cost of production and that the same form part of the cost of supply of structural steel. The order dated 09.01.2020 along with notice of demand dated 25.01.2020 are Annexure ‘7 series’.

14. It is the case of the petitioner that the contract has been awarded to the petitioner for construction of the rail, road, bridge and for that purpose, petitioner purchased structural steel which are nothing but iron and steel of the description given in Section 14(iv) of the Central Sales Tax and those have been fabricated to make railway bridge. Further, petitioner's case is that respondent no. 2 wrongly reached to the conclusion inter alia that structural steel has been converted into a steel structure which is transported to the worksite and placed on the pillars. The petitioner's case is that the moment structural steel is affixed on the pillars, the same becomes immovable property which by itself is out of the purview of taxation.

Findings of the Respondent No.2

15. On perusal of the explanations furnished by the petitioner and on going through the bills relating to the executed works contract and the entries made in the books of account, the respondent no. 2 found that the petitioner claims sale of iron and steel, which is covered under Schedule 3A of the Act of 2005 but in the opinion of the respondent no. 2, this seems to be a case where the petitioner has purchased iron and steel structural which have been fabricated into steel structure and the same has been transported and erected. It is stated that under Section 3 of the Act

of 2005, the petitioner shall be liable to pay tax under this Act on sale or purchase made by him. The word “sale” has been defined under clause (*zc*) of Section 2 of the Act of 2005. The charge would be on the transfer of property in goods (whether as good or in some other form) involved in the execution of works contract. It is his view that steel structure is itself a good which fulfills the parameters of “goods” under The Sale of Goods Act, 1930.

16. Respondent no. 2 has relied upon the judgment of the Hon’ble Supreme Court in the case of **B. Narasamma vs. Deputy Commissioner Commercial Taxes, Karnataka and Anr.** reported in **(2016) 15 SCC 167** and on the judgment of the Hon’ble Supreme Court in the case of **M/s. Gannon Dunkerley and Co. and Ors. vs. State of Rajasthan and Ors.** reported in **(1993) 1 SCC 364** to take a view that the taxable event is the transfer of property in goods involved in the execution of the works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works. Respondent no. 2 has taken a view that in course of execution of contract, the petitioner has transferred the steel structure to the contractee, thus the sale in terms of clause (*zc*) of Section 2 is that of the steel structure which is not mentioned in any of the schedules of the Act of 2005, therefore, in accordance with Section

14(1)(*d*) of the Act of 2005, the petitioner would be liable to pay the prescribed rate, i.e. 13.5 percent on Rs. 20,31,28,116.45/-. Respondent no. 2, however, excluded Rs. 2,13,77,223.48/- which has been incurred on account of labour charges for concrete work. An amount of Rs. 1,37,72,460/- shown as stock transfer within State, has also been excluded. The representative of the petitioner submitted before the respondent no. 2 that the rest of the amount i.e. Rs. 2,03,06,73,605.52/- is on account of labour charges towards fabrication, transporting, erection of steel structures, cutting, strengthening and testing of steel structure. The copy of the agreement with the sub-contractor and proof of payment under different heads were also produced before respondent no.2.

17. The respondent no. 2 perused the works agreement executed by the petitioner with the East Central Railways and found that Schedule A-I and Schedule A-II contained descriptions of the items such as fabrication, cutting, standing, etc. and it involves labour as well as goods component. From RT-VII, the respondent no. 2 found that the petitioner had got the assembly, erection, launching and fabrication work through a sub-contractor. RT-VI shows that a sum of Rs. 1,72,15,39,774.61/- has been paid on account of fabrication and related work. The representative of the petitioner admitted that these expenses were incurred in course

of conversion of structural steel into steel structure by fabrication work. The respondent no. 2, therefore, took a view that it is the steel structure which has been transferred to the contractee pursuant to the work order under the contract and all expenses incurred for purpose of conversion of the structural steel into steel structure is the part of the cost of fabrication. He has taken a view that the sites of sale event in this case is the event where steel structure has been launched on the main pillar. In his opinion, the cost of transportation, launching and installation at the site are the part of the cost of steel structure which have been transferred in course of execution of the contract. Respondent no. 2, therefore, rejected the claim of Rs. 1,72,15,39,774.61/- on the ground that this amount is part of the cost of the steel structure and till the transfer of the ownership of the steel structure to the contractee, the ownership was with the petitioner only. In ultimate analysis, respondent no. 2 has taken a view that in course of execution of works contract, the sale as per clause (*zc*) of Section 2 of the Act of 2005 is that of the steel structure.

18. The respondent no. 2, therefore, assessed the gross turnover and taxable turnover whereunder the petitioner has been made liable to pay Rs. 37,73,62,165.32/-. A direction was issued under the impugned order that the amount paid on account of entry

tax be adjusted and a demand note be issued for the rest of the amount.

Submissions on behalf of the Petitioner

19. Mr. Tarun Gulati, learned Senior Counsel for the petitioner submits that by the impugned order respondent no. 2 held that 'steel structures' are unspecified goods and are liable to tax at the rate of 13.5% instead of 5% which is the maximum rate specified in Section 15 of the Central Sales Tax Act but the State has no power to exceed the rate specified in Section 15 of the CST Act in terms of Article 286(3) of the Constitution of India. Further, it is submitted that impugned order speaks that the labour, fabrication charges, etc. in the conversion of structural steel into steel structure by way of fabrication is to be included in contract are not deductible and that the same are also levied to tax at the rate of 13.5%.

20. It is submitted that Sections 14 and 15 apply to works contracts and the State has no power to tax items specified in Sections 14 and 15 of the CST Act and the impugned order has been passed without jurisdiction. Reliance in this regard has been placed upon the judgments of the Hon'ble Supreme Court in the cases of **Builders Association of India and Ors. vs. Union of**

India reported in **(1989) 2 SCC 645, Gannon Dunkerley** (supra) and **B. Narasamma** (supra).

21. It is submitted that the goods transferred by the petitioner are structural steel which is evident from the bills raised by the petitioner on East Central Railways. Referring to the judgment of the Hon'ble Supreme Court in the case of **Larsen and Tourbo Limited vs. State of Karnataka and Anr.** reported in **(2014) 1 SCC 708**, it is submitted that once the contract provided that the structural steel will be sold, the respondents have no jurisdiction to levy tax on the entire steel structure which is not a commercially traded commodity but part of immovable property. The respondents have lost sight of this principle that the structural steel has been transferred and billed by the petitioner.

22. It is submitted that the respondents have erred in considering the steel structures as commercial distinct goods. The steel structure comes into existence only as immovable property and not as 'goods'. These are not commercially traded goods. It is further submitted that there is no material to show that such large sections of the bridge which come in existence only as a part of bridge when they are incorporated in the bridge, can be regarded as commercially differentiated goods.

23. It is submitted that the steel structure, in the present case, weighs around 2261.321 MT and cannot be moved from place once it is erected and cannot be considered as "goods". The attempt to tax the whole steel structure is an attempt to tax immovable property which is beyond the jurisdiction of the Respondents and is in clear contravention of Entry 54 of List 2 of the Seventh Schedule of the Constitution which permits the respondents only to tax purchase and sale of "goods" and not immovable property.

24. It is submitted that respondents themselves have taxed the sale of structure in the petitioner's own case at the rate of 5% and have allowed the deduction made by the petitioner on account of labour in Assessment Orders for AY 2015-16 and AY 2010-11. Accordingly, it is submitted that there is no change in the factual position of the petitioner and the respondent ought to have adhered to the principles of judicial consistency while passing the impugned order.

25. It is further submitted that contract in question is a divisible contract and the same can be divided into the components of supply of goods and supply of labour and no part of the component of labour by way of fabrication is transferred as property in goods in the execution of the works contract, therefore,

the same does not form part of "sale" as defined in Section 2(zc) of the BVAT Act read with Article 366(29-A) of the constitution of India. Accordingly, the respondents failed to consider the statutory provision as also the Constitution mandate.

26. Referring to the impugned notice issued by the Respondent No. 2, learned Senior Counsel submits that notice has been issued by invoking the jurisdiction of Section 31 of the BVAT Act, 2005 on the ground that the claims in respect of deductions and input tax credit as claimed in the return have not been furnished along with the annual returns but the said notice does not record satisfaction that such deductions have wrongly been claimed in the return and there is omission or failure to make a disclosure on the part of the assessee and the same has escaped assessment. Learned Senior Counsel submits that Section 31 of the Act does not empower reassessment merely to call for details in respect of deductions claimed in the return for verification as according to learned Senior Counsel, such power is only vested in a regular assessment under Section 25 of the Act that too within the period of limitation as set out therein. It is further submitted that Section 31 is not a substitute of a regular assessment and respondent no. 2 cannot proceed for exercising such power as if the same was the regular assessment. Accordingly, learned Senior

Counsel submits that issuance of notice under Section 31 of the Act directing production of evidence for verification is wholly illegal and without jurisdiction.

27. It is further submitted that petitioner has filed its return on 30.12.2015 and has made true and fair disclosure of its turnover. The petitioner has also filed its tax audit report along with the return and after having made such disclosure in the return, it cannot be said that petitioner has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit in terms of Section 31 of the BVAT, 2005. It is submitted that the condition precedent to the exercise of jurisdiction under Section 31 of the Act are not fulfilled as Section 31 of the Act requires the prescribed authority to record his reasons and satisfaction before he proceeds to make a reassessment. It is stated that no such reason of belief or satisfaction has been recorded by the respondents in the notice and also in the order.

28. It is submitted that the present proceeding is the reassessment proceeding which are beyond jurisdiction and the impugned order has been passed on mere change of opinion, particularly, in view of the acceptance of returns of the petitioner in preceding and subsequent years.

29. It is submitted that the petitioner cannot be relegated to alternative remedy if the writ petition has remained pending for a long time. In this regard reliance has been placed on the judicial pronouncements in the case of **Durga Enterprises (P) Ltd. vs. Principal Secretary, Govt. of UP** reported in **(2004) 13 SCC 665** and **Dr. Bal Krishna Agarwal vs. State of UP and Ors.** reported in **(1995) 1 SCC 614.**

30. It is submitted that it is the specific case of the petitioner that the entire fabrication work is done by sub-contractor and not by the petitioner. Accordingly, the entire sub-contractor's turnover was deducted to arrive at the taxable turnover. It is further submitted that by treating the entire incomplete structure as separate goods, the deduction of the sub-contractors' turnover has been disallowed. It is submitted that apart from the fact that the incomplete structure are not separate goods, no VAT can be levied on the hands of the petitioner as such value addition is not made by the petitioner. The petitioner only supplies structural steel, and accordingly, turnover of the petitioner is limited to the supply of the structural steel. The remaining work is carried out by the sub-contractors and levy of tax on such is on sub-contractor and not on the petitioner. Relying on the judgment of the Hon'ble Supreme Court in the case of **Authority for Clarification and Advance**

Ruling, Gandhinagar Karnataka and Anr. Vs. Skyline Construction and Housing Pvt. Ltd. reported in **2025 SCC OnLine SC 2239,** learned Senior Counsel has submitted that it is well settled principle that the payment made to sub-contractors is required to be deducted for determining the taxable value for the purpose of calculating tax on the main contractor. Further, the Hon'ble Supreme Court has held that to the extent the contract was executed through sub-contractor, it cannot be said that the works contract was executed by the main contractor.

31. It is submitted that the incomplete structure before it becomes parts of immovable property is not separate goods. It is submitted that for separate goods to emerge which can be taxed as separate goods, the process or manufacture of such goods is essential. It is submitted that while there may have been some change in iron and steel due to the welding, the change is immaterial because it does not lead to any commodity known to the market as separate goods which has distinct name, character and use. Learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **UOI vs. Delhi Cloth and General Mills Co. Ltd.** reported in **19771 E.L.T. 199 (SC).** It is submitted that in the present case, there is no evidence that huge semi-finished span of the bridge is capable of being sold in the

market. It is also submitted that the structural steel has not changed its character of iron and steel and the structural steel is developed for a specific purpose i.e. to be a part of the immovable bridge and cannot be put to any other use.

32. It is further submitted that prior to 08.04.2011, Section 15(a) of the CST Act provided that tax payable under any State law in respect of sale or purchase of declared goods inside the State shall not exceed 4% of the sale or purchase price thereof. Accordingly, prior to 01.04.2011, Section 14(1)(b) of the BVAT Act provided that tax shall be payable on the sale price of the goods specified in the Schedule III at the rate of 4%. Further, Entry 55 of the Schedule III of the BVAT Act covered "goods as specified in section 14 of the Central sales Tax, 1956 excluding LPG for the domestic use.". However, by virtue of Finance Act, 2011, the rate of tax provided under Section 15(a) was substituted from 4% to 5% w.e.f. 08.04.2011. Consequently, some changes were made to the BVAT Act vide notification no. L.G. 1-17/2011-73/Leg dated 01.04.2011. One of the changes, as per the aforesaid notification Entry 1 to the Schedule IIIA was inserted which provided for "goods as specified in section 14 of the Central Sales Tax Act, 1956." Subsequently, Notification No. S.O. 181 dated 29.07.2011 was issued by which some amendments were notified

in which (a) Entry 1 of the Schedule IIIA was omitted. Accordingly, Schedule IIIA currently does not provide any entry and (b) Entry 55 of the Schedule III was substituted to "goods as specified in section 14 of the Central Sales Act, 1956 other than those specified in any of the Schedules appended to the Act.".

33. Referring to the aforesaid legislative history, learned senior counsel submits that it is apparent that the Department's contention that the petitioner's goods fall under Schedule IIIA is wholly untenable. Entry 1 of the Schedule IIIA was inserted vide Notification 1 dated 01.04.2011 and was omitted vide Notification 2 dated 29.07.2011. Accordingly, after 29.07.2011, Schedule IIIA contains no entry, and the goods as specified in Section 14 of the Central Sales Act, 1956 are specifically covered under Schedule III of the BVAT Act. As the dispute relates to the year 2014-15 only Entry 55 of the Schedule III is relevant according to which the petitioner had paid the tax. Therefore, the classification adopted by the petitioner in its return (i.e. the petitioner's goods fall under Schedule III) is correct, and in accordance with law.

34. Learned Senior Counsel for the petitioner submits that the judgment in the case of **Quippo Energy Ltd. vs. Commissioner of Central Excise Ahmadabad-II (2025) 152 GSTR 264** relied upon by the respondent no. 2 is not applicable in

this case as in the case case, there was a clear finding that the goods are marketable and functional but in the present case, the incomplete span of the bridge is not marketable at all and is of no use. It becomes complete only when it is attached to the bridge and at that stage it is not "marketable goods" but a part of immovable property.

Submissions on behalf of the Respondents

35. Respondents have appeared in these matters and filed their counter affidavits. It is their stand that the works contract was awarded to the petitioner for construction of steel superstructure of open web triangulated girder on the bridge over river Ganga in Patna and other ancillary works and for this purpose, it has purchased iron and steel and got the same fabricated into the superstructure and after fabrication brought the superstructure at the site of the bridge and erected it.

36. Mr. Vikash Kumar, learned SC-11 has contested the submissions of learned counsel for the writ petitioners and submitted that the two issues involved in this case are as follows:-

(i) Whether sale of "goods -steel superstructure/ triangulated steel girders" under Section 2(zc) of the BVAT Act by the petitioner are goods specified as "iron and steel" under Section 14(iv) of CST Act?

(ii) Whether disallowance of an amount of Rs.1,72,15,39,774.18 by authorities out of the claimed amount of Rs.2,06,58,23,291.50 is justified in the light of judgment dated 17.11.1992 passed by Hon'ble Supreme Court in the case of **Gannon Dunkerley and Co. & Ors.** reported in **(1993) 1 SCC 364** reiterated by Hon'ble Supreme Court vide judgment dated 07.10.2025 in the case of **M/s Aristo Printers Pvt. Ltd. vs. Commissioner of Trade Tax, Lucknow, U.P. (2025 INSC 1188).**

37. Learned SC-11 has submitted that the property in the fabricated superstructure was transferred to the contractee at the time of erection of the superstructure, accordingly, the Assessing Officer rightly held that the property transferred in execution of works contract was pre-fabricated superstructure which was a commodity different from iron and steel, therefore, it was a sale of unspecified commodity attracting at the rate of 13.5%.

38. Learned SC-11 while defending the impugned order has submitted that on a bare perusal of tender document it appears that the tender was floated which says that the superstructure had to be fabricated in the workshops set up for it before delivery and the superstrucutre was not a monolithic structure which consists of multiple fabricated spans and the same had to be taken to the bridge site for erection.

39. Learned counsel for the respondents has submitted that many judicial pronouncements has upheld the assessment/reassessment under Section 31 of the BVAT Act and claim of the petitioner that the Assessing Authority has failed to record its satisfaction has no leg to stand as the petitioner had evaded payment of huge tax in previous years also and the Assessing Authority was very much satisfied that the petitioner had underpaid taxes which has been elaborately discussed in the impugned order. It is submitted that petitioner has transferred fabricated steel superstructure, not iron and steel, to the contractee Indian Railways. It is his stand that since steel superstructure is an unspecified commodity not covered by any schedule under the BVAT Act, the same would come under the tax at the rate 13.5%.

40. It is submitted that property transferred by the contractee was triangulated bridge girders, the same invites tax rates applicable to unspecified goods on the value at the time of transfer of property which is triangulated bridge girders. Learned counsel has submitted that the claim of the petitioner that the fabricated triangulated girder or bridge superstructure is nothing but iron and steel as defined under Section 4 of the CST Act has no leg to stand in view of the number of judicial pronouncements wherein it has been held that products made/ manufactured out of

iron and steel no longer remain iron and steel. If bridge structure is made out of steel the steel loses its character and becomes a totally different commodity both commercially and technically.

41. Referring to the judgment of the Hon'ble Supreme Court in the case of **Devi Dass Gopal Krishan and others vs. The State of Punjab and Others** reported in **(1966) 17 STC 313, 315,** it is submitted that the conversion of iron and steel items like bars, rods, angles, sections, structural etc. into triangulated bridge superstructure involves substantial process of manufacture which results into a totally different commodity, district from iron and steel as defined under Section 14 of CST Act.

42. Learned counsel submits that the taxable event was erection/launching of the superstructure when property in goods passed to the contractee. Any expenditure on account of labour or otherwise on the raw material prior to the taxable event (transfer of property in goods) got embedded in the value to the superstructure (triangulated girder) in which the property was transferred and therefore, it is the value of the superstructure which attracted the tax and not the value of the raw material purchased by the petitioner. It is submitted that the petitioner had not made true and complete disclosure in its returns nor had it paid due tax on its turnover inasmuch as it had paid tax at the rate of 5% instead of

13.5% on bridge superstructure. Thus, the assessment order is very much justified and within the precincts of law.

43. Learned counsel submits that the ratio of judgment rendered in the case of **Larsen and Tourbo Limited vs. State of Karnataka and Anr.** (supra) is not applicable in the present case as the petitioner remained the owner of the goods until they were transferred to the contractee by the petitioner itself.

44. Learned counsel referring to the list mentioned under Section 14 of the CST Act submits that the same does not include the item 'bridge superstructure' or 'open web triangulated girder or even girder' or rail bridge structure'. It is worth mentioning here that this list of iron and steel items under Section 14 is qualified by the words "that is to say" which means that the list is exhaustive and nothing can be added to or subtracted from it.

45. Learned counsel submits that in the present case, the period 2014-15 is involved in the present case but the petitioner has relied on the period 2010-11 and the Assessing Officer for period 2010-11, on iron and steel determined tax at the rate of 4% and on other items, even though details are not provided the reinforcement steel has rightly been treated as iron and steel with other unspecified consumable being cement.

46. Learned counsel representing Respondent No. 2 submits that the steel structurals supplied by the petitioner has undergone the process of fabrication by sub-contractor who has altered its identity and new commercial commodity of steel superstructure/ triangulated steel structure has come into existence which was incorporated in execution of works contract and satisfies the twin tests which are transformation test and marketibility test. In this regard, learned counsel has relied upon the judgment of **Quippo Energy Ltd. vs. Commissioner of Central Excise Ahmadabad-II (2025) 152 GSTR 264.**

Consideration

An introduction of the agreement between the parties

47. The petitioner and the East Central Railways (hereinafter referred to as the 'Railways') entered into a works contract on 10.02.2009, under which the petitioner agreed to execute the work for assembly, erection, launching of (18×123m) + (1×64m) span triangulated steel girder for new rail-cum-road bridge across River Ganga at Patna from Digha Ghat end (South end) including transportation of fabricated components of (17×123m) + (1×64m) span from fabricated workshop at Digha Ghat end and (1×123m) span from fabrication workshops at Pahleja Ghat end of River Ganga to the launching site, including

casting of RCC pedestals and final coat of painting at an approximate cost of Rs. 11,91,30,96,686.30/-. Schedule A is in respect of fabrication, Schedule B for contingency items and Schedule C-I of the agreement is related with supply of cement. Schedule C-II relates with supply of reinforcement steel and Schedule C-III is related with the supply of structural steel.

48. It is a matter of record that on 27.03.2009, an agreement was executed between the petitioner and M/s GPT-Rahee (JV) for assembly, erection/launching of (18×123m) + (1×64m) span triangulated steel girders for new rail-cum-road bridge across River Ganga at Patna from Digha Ghat end (South end), including transportation of fabricated components of (17×123m) + (1×64m) span from fabrication workshop at Digha Ghat end and (1×123m) span from fabrication workshop at Pahleja Ghat end of River Ganga to the launching site, including casting of RCC pedestals and final coat of painting. As per the revised bid submitted by M/s GPT-Rahee (JV), total cost of work was Rs. 107,08,70,000/-. It is the case of the petitioner that pursuant to the contract awarded by the Government of India for construction of the rail-cum-road bridge, the petitioner purchased structural steel, which are nothing but iron and steel of the description given in Section 14(iv) of the Central Sales Tax (in short ‘CST’) Act,

whereas the work includes casting of RCC pedestals and other ancillary work. The petitioner filed it's annual return along with TAR for the period 2014-15 on 30.12.2015, in which the petitioner claimed as under:

Sl. N.	Particulars	Amount
1	Gross Turnover	Rs. 2,26,89,51,407/-
2	Amount of other allowable deduction	Rs. 2,06,58,23,291/-
3	Taxable Turnover	Rs. 20,31,28,116.50/-
4	Tax @ 5 %	Rs. 1,01,56,405.82/-

49. The petitioner was served with a notice under Section 31 of the Bihar Value Added Tax (in short 'BVAT') Act, 2005 . The reason for the same was shown as (i) Non-furnishing of evidence as regards claim deduction and (ii) Verification of applicable rate of tax. The petitioner was, therefore, called upon to furnish the evidences regarding the claimed deduction of Rs. 2,06,58,23,290.50/- and regarding the claim for Rs. 45,81,045.96/- against Input Tax Credit (ITC). The representative of the petitioner appeared and made his submissions. The respondent No. 2, being the assessing authority, passed the impugned order dated 09.01.2020 whereunder the respondent no. 2 accepted the claim of Rs. 45,81,045.96/- against ITC and allowed an amount of Rs. 63,72,988.50/- paid against entry tax to be adjusted against liability for the VAT.

Views of the Assessing Officer (R-2)

50. However, the respondent no. 2 did not agree with the applicability of rate of tax by the petitioner at the rate of 5% in its return on taxable turnover of Rs. 20,31,20,116.50/-. Relying upon the judgments of the Hon'ble Supreme Court in the case of **B. Narasamma** (*supra*); **Devi Dass Gopal Krishan** (*supra*), **State of Tamil Nadu vs. Pyare Lal Malhotra and Ors.** reported in **AIR 1976 SC 800** and **Gannon Dunkerley** (*supra*), the respondent no. 2 held that the rate of tax would be 13.5% and not at the rate of 5% as claimed by the petitioner. Against the claim deduction of Rs. 2,06,58,23,290.80/- under Section 35 of the BVAT Act, the respondent no.2 allowed an amount of Rs. 3,41,49,683.48/- against deductions but rejected the contention of the petitioner with respect to the rest of the amount, which the petitioner was contending that those were related with payment of labour charges on fabrication, transporting, erection of steel structure, cutting, strengthening, testing of steel structure. Respondent no. 2 considered the details provided by the petitioner in Form RT-VII, which showed the execution of work of assembly, erection, launching and fabrication by sub-contractor and the cost for fabrication and related work along with transportation of fabricated material as per details furnished in RT-VI to be Rs. 1,72,15,39,774.61/-. The claim of deductions of Rs.

2,06,58,23,290.80/- under Section 35 of the BVAT Act and the claim rejected by respondent no. 2 are being shown hereunder in tabular form for ready reference:-

1.	Fabrication, transporting, erection of steel structural	Rs. 1,12,04,37,779.93
2	Cutting, straightening, testing of steel structural	Rs. 30,08,09,545.64
3	Escalation for fabrication, transporting erection of steel structural and cutting, straightening testing of steel structural	Rs. 60,94,26,280.04
4	Labour charge for concrete work	Rs. 2,13,77,223.48
5	Total	Rs. 2,05,20,50,829.09
6	Stock transfer within state	Rs. 1,37,72,460.00
7	Total Deduction	Rs. 2,06,58,23,289.09

1.	Fabrication, transporting, erection of steel structural	Rs. 1,12,04,37,779.93
2	Cutting, straightening, testing of steel structural	Rs. 30,08,09,545.64
3	Escalation for fabrication, transporting erection of steel structural and cutting, straightening testing of steel structural	Rs. 60,94,26,280.04
4	Cost of erection (as per RT-VI submitted by the Dealer)	Rs. 30,91,33,831/-
5	Cost of fabrication and related work along with transportation of fabricated material to the site of installation **(1+2+3+4)**	**Rs. 1,72,15,39,774.61**

51. Respondent no. 2 considered the definition of sale under Section 2(zc) of the BVAT Act and held that the rejected claim amount is part of the cost of the steel structure as till the transfer of the ownership of the steel structure to the contractee,

the ownership was with the petitioner only. Respondent no. 2 has taken a view that in course of execution of works contract, the sale as per clause (zc) of Section 2 of the BVAT Act is that of the steel structure. The petitioner has been made liable to pay Rs. 37,73,62,165.32. The respondent no. 2 has, vide the impugned order, ascertained the tax at the rate of 13.5% on taxable value of Rs. 1,92,46,67,892.77/- and determined the amount of tax payable as Rs. 25,52,49,120.52/- and imposed interest under Section 39(4) of the BVAT Act. However, no penalty under Section 31 of the BVAT Act has been imposed. The respondent no. 2 has, however, allowed an amount of Rs. 20,68,63,672.00/- against the purchase from outside the State.

***Res-Judicata* Principle in Taxation**

52. One of the contentions of the petitioner is that for the period 2010-11, the Assessing Officer had allowed the deductions of an amount of Rs. 36,74,85,343/- against the claimed amount of Rs. 67,92,88,164.50/- and had determined the tax on iron and steel at the rate of 4%.

53. It is the contention of the respondent-department that the work of the petitioner includes casting of RCC pedestals, which may be executed using reinforcement steel (Schedule C-II) and cement (Schedule C-I). RCC pedestals as per definition is a

short vertical compression member of reinforced cement concrete that transfers load from a column to a footing.

54. In case of **Smt. B. Narasamma** (supra), the Hon'ble Supreme Court has taken note of the factual position as existing in the said case, wherein it appeared that "…. Different types of steel bars/ rods of different diameters are used as reinforcement (like TMT bars, CTD bars etc). The reinforcement bars/rods need to be bent at the ends in a particular fashion to withstand the bending moments and flexural shear. The main reinforcement bars/rods have to be placed parallelly along the direction of the longer span. The diameters of such main reinforcement rods/bars and the distance between any two main reinforcement bars/rods is calculated depending on the required loads to be carried by the reinforced cement concrete structure to be built based on various engineering parameters. ...."

55. The Hon'ble Supreme Court quoted the factual positions which were appearing from the order of the Karnataka Appellate Tribunal as under:-

> "From the above discussion it is clear that largely in building construction works, no pre-fabrication of any steel structure is done before embedding them in cement concrete mixture to form reinforced cement concrete structures. The findings of the lower authorities to the contrary effect in the cases on hand are entirely opposed to facts.

> The only process to which the steel reinforcement rods/bars are subjected to before being embedded with cement concrete mixture is bending at its ends after cutting of steel rods/bars to the required size and tying them at the intersections with binding wire. None of these processes constitute a manufacturing process and no new commodity is produced before incorporation into the works."

56. Further, in case of **Smt. B. Narasamma** (supra) in paragraph '19', the Hon'ble Supreme Court relied upon the judgment in **Pyare Lal Malhotra** (supra) case and observed as under "….where, commercial goods without change of their identity as such, are merely subject to some processing or finishing, or are merely joined together, and therefore, remain commercially the same goods which cannot be taxed again, given the rigor of Section 15 of the Central Sales Tax Act. ..."

57. We have perused the order dated 09.02.2015 passed by the then assessing authority in respect of the period 2010-11. According to this order (Annexure '12' to the writ petition), the contractor company had claimed deductions on account of payments made to the sub-contractors on account of labour charges and services, payments made to the plant designer and architect etc., which were found admissible deductions. The details of the amount allowed to be deducted includes the amount paid to the sub-contractors towards fabrication work, drilling and fixing of

anchor bar, technical consultancy charges and testing charges. It is evident on going through the order of the Assessing Officer in respect of the year 2010-11 that the Assessing Officer had allowed only Rs. 36,74,85,343.50/- out of the claimed amount of Rs. 67,92,88,164.50/- and this was the amount accepted as the labour charges. In the year 2010-11, the respondent no. 2 taxed Rs. 1,47,52,87,301.50/- at the rate of 4% and taxed Rs. 2,65,89,410/- at the rate of 12.5%. The gross receipt as per the trading account of the assessee for the year ending 31.03.2011 was shown at Rs. 1,86,27,72,645/-. The Assessing Officer also recorded that in execution of the works contract, the taxable materials such as iron and steel and other miscellaneous unspecified consumables were valued at Rs. 1,47,52,87,301.50/- and other miscellaneous unspecified consumables were Rs. 2,65,89,410/-.

58. What is culled out from the order of the assessing authority in respect of the year 2010-11 is that the iron and steel used in execution of the works contract were charged at the rate of 4%. Thus, a question would arise as to whether this would operate as *res judicata* and the revenue cannot be allowed to take a plea that the steel structure in this case would not be covered under the specified goods (iron and steel) in terms of Section 14(iv) of the Central Sales Tax Act. The revenue is now treating the steel

superstructure/triangulated steel girder as different and distinct from structural steel as according to it, the steel superstructure/triangulated steel girders would be classified as "not specified goods" in Schedule I, II, III, IIIA and IV therefore, liable to be taxed on the sale price at the prevalent rate of 13.5% (increased to 14.5% with effect from 12.8.2016).

59. In case of **Radhasoami Satsang, Saomi Bagh, Agra vs. Commissioner of Income Tax** reported in **(1992) 1 SCC 659**, the Hon'ble Supreme Court has observed in paragraph '16' as under:-

> "**16.** We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

60. It is, therefore, well settled that principles of *res judicata* would not apply to the tax proceedings. What is to be seen is as to whether steel structure/triangulated girder would be covered as a specified good under Section 14(iv) of the CST Act as has been earlier decided in the year 2010-11. This is the

fundamental aspect which may have been present in the earlier assessment year but to this Court it appears that this aspect of the matter had not been gone into specifically in the earlier years, therefore, the submissions of learned Senior counsel for the petitioner based on the earlier order passed by the Assessing Officer in respect of the year 2010-11 is unable to persuade this Court. Also because of this reason that this aspect has not been earlier decided, the exercise undertaken by the respondent no. 2 cannot be said to be based on a change of opinion.

Ground of alternative remedy

61. A primary objection has been raised regarding the maintainability of the writ application. On perusal of the records, it appears that vide order dated 05.03.2020, the operation of the demand notice dated 25.01.2020 (Annexure '7 series') was stayed and vide order dated 18.12.2020, the parties were directed to complete their instructions and since then the writ applications are pending for argument and now, it would not be appropriate to dismiss these applications on the ground of alternative remedy. It is well settled that principle of alternative remedy is based on Rule of Prudence but it is not a Rule of law.

Legislative history of Taxation in Works Contract

62. Before coming to the merit of the case, we would briefly take note of the legislative history leading to the 46th Constitution

Amendment. We are required to take note of the relevant provisions of the Constitution, the Central Sales Tax Act and the BVAT Act. Article 286(3) of the Constitution reads as under:-

> "(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,— (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

63. Section 14 and 15 of the Central Sales Tax Act insofar as they relate to the present case are as under:-

> "14. Certain goods to be of special importance in inter-State trade or commerce.—It is hereby declared that the following goods are of special importance in inter-State trade or commerce:—
>
> …..
>
> **(v) steel structurals** (angles, joists, channels, tees, sheet piling sections, Z-sections or any other rolled sections);
>
> ...
>
> [3][15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.— Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:—

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3. Substituted by Act 31 of 1958, S. 11, for S. 15 (w.e.f. 1-10-1958)

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed [4][five percent.] of the sale or purchase price thereof [5][***];

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, [6][and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law] [7][shall be reimbursed to the person making such sale in the course of inter-State trade or commerce] in such manner and subject to such conditions as may be provided in any law in force in that State;]

[8][(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (i) of clause (i) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

[9][(ca) where a tax on sale or purchase of paddy referred to in sub-clause (i) of clause (i) of section 14 is; leviable under the law and the rice procured out of such paddy is exported out of India, then, for the purposes of sub-section (3) of section 5, the paddy and rice shall be treated as a single commodity;

(d) each of the pulses referred to in clause (via) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.]"

4. Substituted by the Finance Act, 2011, S. 74, for "four percent".
5. The words ",and such tax shall not be levied at more than one stage" omitted by Act 20 of 2002, S. 155 (w.e.f. 11-5-2002).
6. Substituted by Act 61 of 1972, S.12, for "the tax so levied" (w.e.f. 1-4-1973).
7. Substituted by Act 61 of 1972, S. 12, for "shall be refunded to such person" (w.e.f. 1-4-1973)
8. Inserted by Act 103 of 1976, S. 8 (w.e.f. 7-9-1976)
9. Inserted by Act 33 of 1996, S. 87 (w.e.f. 28-9-1996)

64. The 46th Amendment of the Constitution added Article 366(29-A) making it possible by deeming fiction to tax sale of goods involved in a works contract. BVAT Act was enacted to consolidate and amend the law relating to levy of tax on sales or purchases of goods in the State of Bihar. It was published in the Gazette of India (Extraordinary) dated 23.06.2005 and made effective from the first day of April 2005. Section 2(j) defines the word "declared goods" which means goods declared under Section 14 of the Central Sales Tax Act, 1956 to be of special importance in inter-state trade or commerce. The word "sale" has been defined under Section 2(zc) which reads as under:-

> "(zc) "sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or for other valuable consideration and includes -
> (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
> (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
> (iii) a delivery of goods on hire purchase or any system of payment by installments;
> (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
> (v) a supply of goods by any unincorporated association or body of persons to a member thereof

for cash, deferred payment or other valuable consideration;

(vi) a 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 (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration,

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and purchase of those goods by the person to whom such transfer, delivery or supply is made."

65. Provisions relating to incidence of tax are provided under Chapter II. Section 3 talks of charge of tax. For our purpose, Section 31 of the BVAT Act would be important to take note of, therefore, we reproduce the same hereunder:-

"**31. Assessment or Re-assessment of Tax of escaped turnover**-(1) If the prescribed authority is satisfied, either on the basis of audit conducted under sub-section (3) of section 26 or otherwise, that reasonable grounds exist to believe that, in respect of any assessment under this Act or under the Bihar Finance Act, 1981, as it stood before its repeal by section 94, during any period, any sale or purchases of goods liable to tax under this Act or the said Act, for any reason, has been under-assessed or has escaped assessment, or has been assessed to tax at a lower rate, or any deduction there from has been wrongly made, or an input tax credit has incorrectly been claimed; the prescribed authority shall, in such manner as may be prescribed and after serving on the dealer a notice in the form

and in the manner prescribed, proceed to assess or re-assess, as the case may be, the tax payable by such dealer within four years from the expiry of the year during which the original order of assessment or re-assessment was passed, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under section 27:

Provided that the amount of tax shall be assessed or re-assessed after allowing such deductions as were allowable during the said period and at rates at which it would have been assessed had the turnover not escaped assessment.

(2) (a) The prescribed authority shall, in a case where the dealer has concealed, omitted or failed to disclose full and correct particulars of such sale or purchase or input tax credit, direct that the dealer shall, besides the amount of interest payable under sub-section (10) of section 24, pay by way of penalty a sum equal to three times the amount of tax which is or may be assessed on the turnover of sale or purchase which escaped assessment.

(b) The penalty imposed under clause (a) shall be in addition to the amount of tax, which is or may be assessed on the turnover of sale or purchase which escaped assessment.

[1][(c) No order shall be passed under this sub-section without giving the dealer a reasonable opportunity of being heard.]

(3) Any assessment or re-assessment made and any penalty imposed under this section shall be without prejudice to any action, which is or may be taken under section 81”

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1. Inserted by the Bihar Value Added Tax (Amendment) Act, 2011 vide Notification No. L.G.-1-06/2011/105 Leg. Dated 27.05.2011. w.e.f. 27.05.2011.

Case -Laws discussed

66. There are catena of judgments of the Hon'ble Supreme Court such as **Builders Association of India** (supra) and **Gannon Dunkerley** (supra) wherein the Hon'ble Supreme Court has discussed the issue of taxability on the iron and steel products that are reinforced for cement concrete used in building and structures. It has been held in the case of **B. Narasamma** (*supra*) that a conjoint reading of **Builders Association of India** (*supra*) and **Gannon Dunkerley** (*supra*) would emerge in a proposition that works contract that are liable to be taxed after the 46th Constitution Amendment are subject to the drill of Article 286(3) read with Section 15 of the Central Sales Tax Act, namely that they are chargeable at a single point and at a rate not exceeding 4% at the relevant time. Further, the point at which the iron and steel products are taxable is the point of a creation, that is the point of incorporation into the building or structure. We reproduce paragraph '14, '15', and '16' of the judgment in case of **B. Narasamma** (*supra*) to place on record a comprehensive understanding of the legislative history and the case laws developed on the subject:-

> "**14.** Having heard the learned counsel for the parties, we are of the opinion that Shri N. Venkatraman is right. The matter is no longer res integra. Two important propositions

emerge on a conjoint reading of *Builders' Assn.*[4] and *Gannon Dunkerley*[5]. First, that works contracts that are liable to be taxed after the 46th Constitution Amendment are subject to the drill of Article 286(3) read with Section 15 of the Central Sales Tax Act, namely, that they are chargeable at a single point and at a rate not exceeding 4% at the relevant time. Further, the point at which these iron and steel products are taxable is the point of accretion, that is, the point of incorporation into the building or structure.

15. The relevant paragraphs from these two decisions, therefore, need to be set out. In *Builders' Assn.*[4], this Court held: (SCC pp. 670 & 674-75, paras 32 & 38-41)

"*32*. … We are of the view that all transfers, deliveries and supplies of goods referred to in sub-clauses (*a*) to (*f*) of clause (29-A) of Article 366 of the Constitution are subject to the restrictions and conditions mentioned in clause (1), clause (2) and sub-clause (*a*) of clause (3) of Article 286 of the Constitution and the transfers and deliveries that take place under sub-clauses (*b*), (*c*) and (*d*) of clause (29-A) of Article 366 of the Constitution are subject to an additional restriction mentioned in sub-clause (*b*) of Article 286(3) of the Constitution.

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38. In Benjamin's *Sale of Goods* (3rd Edn.) in para 43 at p. 36 it is stated thus:

4. Builders' Assn. of India v. Union of India, (1989) 2 SCC 645 : 1989 SCC (Tax) 317

5. Gannon Dunkerley and Co. v. State of Rajasthan, (1993) 1 SCC 364

'*Chattel to be affixed to land or another chattel*.—Where work is to be done on the land of the employer or on a chattel belonging to him, which involves the use or affixing of materials belonging to the person employed, the contract will ordinarily be one for work and materials, the property in the latter passing to the employer by accession and not under any contract of sale. Sometimes, however, there may instead be a sale of an article with an additional and subsidiary agreement to affix it. The property then passes before the article is affixed, by virtue of the contract of sale itself or an appropriation made under it.'

39. In view of the foregoing statements with regard to the passing of the property in goods which are involved in works contract and the legal fiction created by clause (29-A) of Article 366 of the Constitution it is difficult to agree with the contention of the States that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of the works contract, but a conglomerate, that is the entire building that is actually constructed. After the 46th Amendment it is not possible to accede to the plea of the States that what is transferred in a works contract is the right in the immovable property.

40. We are surprised at the attitude of the States which have put forward the plea that on the passing of the 46th Amendment the Constitution had conferred on the States a

larger freedom than what they had before in regard to their power to levy sales tax under Entry 54 of the State List. The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials. We do not accept the argument that sub-clause (*b*) of Article 366(29-A) should be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of Entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29-A) of Article 366 is to be found only in Entry 54 and not outside it. We may recapitulate here the observations of the Constitution Bench in *Bengal Immunity Co. Ltd.*[7] in which this Court has held that the operative provisions of the several parts of Article 286 which imposes restrictions on the levy of sales tax by the States are intended to deal with different topics and one could not be projected or read into another and each one of them has to be obeyed while any sale or purchase is taxed under Entry 54 of the State List.

41. We, therefore, declare that sales tax laws passed by the legislatures of States levying

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7. Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446

taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. We, however, make it clear that the cases argued before and considered by us relate to one specie of the generic concept of "works contracts". The case-book is full of the illustrations of the infinite variety of the manifestation of "works contracts". Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing power of the State as are applicable to "works contracts" represented by "building contracts" in the context of the expanded concept of "tax on the sale or purchase of goods" as constitutionally defined under Article 366(29-A), would equally apply to other species of "works contracts" with the requisite situational modifications."

16. In *Gannon Dunkerley*[5], this Court held: (SCC pp. 386, 389, 392 & 394, paras 31, 37, 41 & 45)

"*31*. … Apart from the limitations referred to above which curtail the ambit of the legislative competence of the State Legislatures, there is clause (3) of Article 286 which enables Parliament to make a law placing restrictions and conditions on the exercise of the legislative power of the State

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5. Gannon Dunkerley and Co. v. State of Rajasthan, (1993) 1 SCC 364

under Entry 54 in State List in regard to the system of levy, rates and other incidents of tax. Such a law may be in relation to (*a*) goods declared by Parliament by law to be of special importance in inter-State trade or commerce, or (*b*) to taxes of the nature referred to in sub-clauses (*b*), (*c*) and (*d*) of clause (29-A) of Article 366. When such a law is enacted by Parliament the legislative power of the States under Entry 54 in State List has to be exercised subject to the restrictions and conditions specified in that law. In exercise of the power conferred by Article 286(3)(*a*) Parliament has enacted Sections 14 and 15 of the Central Sales Tax Act, 1956. No law has, however, been made by Parliament in exercise of its power under Article 286(3)(*b*).

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37. … For the same reasons Sections 14 and 15 of the Central Sales Tax Act would also be applicable to the deemed sales resulting from transfer of property in goods involved in the execution of a works contract and the legislative power under Entry 54 in State List will have to be exercised subject to the restrictions and conditions prescribed in the said provisions in respect of goods that have been declared to be of special importance in inter-State trade or commerce.

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41. … So also it is not permissible for the State Legislature to impose a tax on goods declared to be of special importance in inter-State trade or commerce under Section 14 of

> the Central Sales Tax Act except in accordance with the restrictions and conditions contained in Section 15 of the Central Sales Tax Act.
>
> ***
>
> *45*. … Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor. We are also unable to accept the contention urged on behalf of the States that in addition to the value of the goods involved in the execution of the works contract the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(*b*)."

67. In **B. Narasamma** (*supra*), the Hon'ble Supreme Court has also quoted paragraph '9' and '10' of the judgment in case of **Pyare Lal Malhotra** (*supra*) which are as under:-

"*9*. If the object was to make iron and steel taxable as a substance, the entry could have been: "Goods of Iron and Steel". Perhaps even this would not have been clear enough. The entry, to clearly have that meaning, would have to be: "Iron and Steel irrespective of change of form or shape or character of goods made out of them". This is the very unusual meaning which the respondents would like us to adopt. If that was the meaning, sales tax law itself would undergo a change from being a law which normally taxes sales of "goods" to a law which taxes sales of substances, out of which goods are made. We, however, prefer the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item. This means that each item so specified forms a separate species for each series of sales although they may all belong to the genus: "Iron and Steel". Hence, if iron and steel "plates" are melted and converted into "wire" and then sold in the market, such wire would only be taxable once so long as it retains its identity as a commercial goods belonging to the category "wire" made of either iron or steel. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made.

10. As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may

have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type.”””

68. At this stage, we refer Section 14 of the BVAT Act 2005 which reads as under:-

“14. Rate of Tax

(1) Tax shall be payable on the sale price of —

(a) the goods specified in the Schedule II, at the rate of one percent;

[1](b) the goods specified in the Schedule III, at the rate of four percent

[2][(bb) the goods specified in the schedule IIIA, at the rate of four percent]

(c) the goods specified in the Schedule IV, at the rate not exceeding fifty percent but not less than twenty percent, as the State Government may, subject to such conditions and restrictions, by notification, specify

[3][(d) any other goods, not specified in the Schedules I, II, III and IV, at the rate of twelve and a half percent.]

(2) The State Government may, by notification, alter any Schedule to this Act."

1. Substituted by the Bihar Finance Act 2011 vide Notification No. L.G. 1-17/2011-73/ Leg dated 01.04.2011 for the following :- "(b) the goods specified in the Schedule III, at the rate of four per cent.;"
2. Inserted by the Bihar Finance Act 2011 vide Notification No. L.G. 1-17/2011-73/ Leg dated 01.04.2011
3. Substituted by the Bihar Finance Act 2011 vide Notification No. L.G. 1-17/2011-73/ Leg dated 01.04.2011.
"(d) any other goods, not specified in the Schedules I, II, III and IV, at the rate of twelve and a-half per cent."

69. It is evident from a reading of this provision that clause (bb) were inserted by Finance Act 3 of 2011. It provides for the goods specified in Schedule IIIA to be taxed at the rate of 4%. It is evident from the aforementioned provisions and the judicial pronouncements on the subject that the taxable event in the case of execution of a works contract is the transfer of property in goods involved in the execution of the contract and that transfer occurs when goods are incorporated in the works. Consequently, it would be the value of the goods at the time of incorporation which would constitute the measure for the levy of the tax. It is in this background, the revenue has contended before this Court that the goods i.e. the steel superstructure/triangulated steel girder is different and distinct from steel structurals (angles, joists, channels, tees, seat pilings sections, Z-sections, or any other rolled sections). It is stated that the steel structurals includes (angles, joists, channels, tees, seat pilings sections, Z-sections or any other rolled sections) supplied by the petitioner has undergone the process of fabrication by sub-contractor who has altered its identity and a new commercial commodity of steel superstructure/triangulated steel structure has come into existence which has been incorporated in execution of works contract and it satisfies the twin tests of (i) transformation test and (ii)

marketability test as set out by the Hon'ble Supreme Court in the matter of **Quippo Energy Ltd. vs. Commissioner of Central Excise Ahmadabad-II (2025) 152 GSTR 264.** It is worth mentioning that in case of **Quippo** (*supra*) the Hon'ble Supreme Court was considering a question as to whether the process of placing the genset within a steel container and fitting the steel container with components such as radiator, ventilation fan, air filter unit, oil tank, pipes, pumps, valve and silencers would amount to "manufacture" under Section 2(f) of the Central Excise Act, 1944. In that context, the Hon'ble Supreme Court considered the term "manufacture" as defined under Section 2 of the Act of 1944 and held that to become "goods" an article must be something which can ordinarily come to market to be brought and sold. The views expressed by the Hon'ble Supreme Court in paragraph '26' and '27' of the judgment are as under:-

> "**26.** In *Union of India* v. *J.G. Glass Industries Ltd.*[10], this court was dealing with the question whether printing on glass bottles amounts to "manufacture" within the meaning of section 2(f) of the Act, 1944. The court accepted the contention of the respondents that the activity of printing names or logos on the bottles did not change the basic character of the commodity and that the plain bottles in themselves were commercial commodities and could be sold and used as such. Thus, the court held that printing on glass bottles did not amount to "manufacture" under section 2(f) of the Act, 1944.

10. (1999) 114 STC 387 (SC); (1998) 2 SCC 32; 1997 SCC OnLine SC 22

The relevant observations made by this court are reproduced as follows (page 395 in 114 STC):

"16. On an analysis of the aforesaid rulings, a twofold test emerges for deciding whether the process is that of 'manufacture'. **First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether, the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process.** In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use."

(emphasis supplied)"

27. This court in *Union of India* v. *J.G. Glass Industries Ltd*[10] established a two-fold test to ascertain if an activity constitutes "manufacture":

(a) Fundamental change test : The first criterion is to determine if the process results in a new commercial item being created, or if the original item's identity is fundamentally altered or ceases to exist. This means assessing whether a transformation occurs such that a distinct product with a new name, identity, character, or use emerges;

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10. (1999) 114 STC 387 (SC); (1998) 2 SCC 32; 1997 SCC OnLine SC 22

(b) But for the process test : The second criterion evaluates whether the product that existed before the process would be commercially useless or serve no purpose without undergoing that specific process. In other words, if the pre-existing commodity would lack any commercial utility were it not for the process, this condition is met.

70. In its ultimate analysis, the Hon'ble Supreme Court held in paragraph '49' to '52' as under:-

"49**.** The contention of the appellant that the end-use of both products is merely the "generation of electricity" is an oversimplification that conflates the core function of a product with its functional utility. The Genset at the time of the import was in a form that was suitable/intended for permanent installation. The process undertaken by the appellant imparts the core functional utility of portability to the Genset, a utility that was non-existent in the product at the time of its import. This is not a minor, value-added feature, it is the defining attribute from which the final product derives its entire identity and character.

50. We have no doubt in our mind that the test of transformation is satisfied in the facts of the present case. The imported Genset and the power pack are two different commodities with distinct constituent elements, structure and functional utility.

51. We now turn to the final test of marketability. No evidence has been adduced by the appellant to suggest that the power packs are not marketable. On the contrary, it is an admitted position, clear from the record, that it is these very power packs that are the subject of the lease agreements and are delivered to the ultimate customer. Thus, no serious

> question regarding the marketability of the final product remains, it is an established and undisputed fact.
>
> **E. Conclusion**
>
> **52.** In the facts of the present case, both the transformation test and the marketability test stand fulfilled. The process of placing the Genset within the steel container and fitting that container with additional, integral components brings into existence a new, distinct, and marketable commodity. This process would thus amount to "manufacture" under section 2(f)(i) of the Act, 1944. Consequently, the appellant is liable to pay excise duty on the goods manufactured."

71. From the aforementioned discussions, it is culled out that after 46th Amendment of the Constitution came into effect, the works contract was made subject to tax by virtue of Entry 54 of the State List read with Article 366(29-A)(b) of the Constitution of India. Article 366(29-A)(b) contemplated levy and the taxes on the value of the goods involved in the execution of works contract. In **Builders' Association of India vs. Union of India** reported in **(1989) 2 SCC 645,** the Hon'ble Supreme Court has pointed out that in Article 366(29-A)(b) emphasis is on the transfer of property in goods whether as goods or in some other form. In **Gannon Dunkerley** (supra), the Hon'ble Supreme court held that though the tax is imposed on the transfer of property in goods involved in the execution of a works contract, the measure for levy of such

imposition is the value of the goods involved in the execution of a works contract. The Apex Court rejected the contention urged on behalf of the contractors that the value of such goods for levying tax can be assessed only on the basis of cost of acquisition of the goods by the contractor. It has been held that "...Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor....".

The Hon'ble Supreme Court also rejected the contention urged on behalf of the State that in addition to the value of the goods involved in the execution of the works contract, the cost of incorporation of the goods in the works can be included in the measure for levy of tax. It has been held that "... Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(*b*)." While discussing as to how

to determine the value of the goods which are involved in the execution of works contract, the State as well as contractors made their respective submissions which have been considered by the Hon'ble Supreme Court in the case of **Gannon Dunkerley** (supra) in paragraphs '46' and '47' which are being reproduced hereunder:-

> "**46.** With regard to the determination of the value of the goods which are involved in the execution of a works contract the submission of the learned counsel appearing for the States is that a more convenient mode for such determination is to take the value of the works contract as a whole and deduct therefrom the cost of labour and services rendered by the contractor during the course of execution of the works contract. The submission of the learned counsel is that this mode would prevent evasion of tax. The learned counsel for the contractors have submitted that in that event the following deductions should be made from the value of the entire contract in order to arrive at the value of the goods involved in the execution of a works contract:
>
> *(i*) labour charges for execution of the works;
>
> (*ii*) amounts paid to a sub-contractor for labour and services;
>
> (*iii*) charges for planning, designing and architect's fees
>
> (*iv*) charges for obtaining on hire the machinery and tools used in the execution of the works contract;
>
> (*v*) cost of consumables such as water, electricity, fuel, etc.
>
> (*vi*) transportation charges for transport of goods to the place of works;
>
> (*vii*) overhead expenses of the head office and branch office including rents, salary, electricity, telephone

charges, etc. and interest charges to banks and financial institutions;

(*viii*) profits expected on such contract.

47. Keeping in view the legal fiction introduced by the Forty-sixth Amendment whereby the works contract which was entire and indivisible has been altered into a contract which is divisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works, [item No. (*i*)], amounts paid to a sub-contractor for labour and services [item No. (*ii*)], charges for planning, designing and architect's fees [item No. (*iii*)], charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contract [item No. (*iv*)], and the cost of consumables such as water, electricity, fuel, etc. which are consumed in the process of execution of a works contract [item No. (*v*)] and other similar expenses for labour and services will have to be excluded as charges for supply of labour and services. The charges mentioned in item No. (*vi*) cannot, however, be excluded. The position of a contractor in relation to a transfer of property in goods in the execution of a works contract is not different from that of a dealer in goods who is liable to pay sales tax on the sale price charged by him from the customer for the goods sold. The said price includes the cost of bringing the goods to the place of sale. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of

the value of the said goods. The charges mentioned in item No. (*vii*) relate to the various expenses which form part of the cost of establishment of the contractor. Ordinarily the cost of establishment is included in the sale price charged by a dealer from the customer for the goods sold. Since a composite works contract involves supply of materials as well as supply of labour and services, the cost of establishment of the contractor would have to be apportioned between the part of the contract involving supply of materials and the part involving supply of labour and services. The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods. Similar apportionment will have to be made in respect of item No. (*viii*) relating to profits. The profits which are relatable to the supply of materials can be included in the value of the goods and the profits which are relatable to supply of labour and services will have to be excluded. This means that in respect of charges mentioned in item Nos. (*vii*) and (*viii*), the cost of establishment of the contractor as well as the profit earned by him to the extent the same are relatable to supply of labour and services will have to be excluded. The amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover—

(*a*) Labour charges for execution of the works;
(*b*) amount paid to a sub-contractor for labour and services;
(*c*) charges for planning, designing and architect's fees;
(*d*) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
(*e*) 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; and
(*f*) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
(*g*) other similar expenses relatable to supply of labour and services;
(*h*) profit earned by the contractor to the extent it is relatable to supply of labour and services.
The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor."

72. In order to give clarity to its opinion with respect to the deductions, the Hon'ble Supreme Court made it clear that it will be necessary to exclude from the value of the goods which are not taxable in view of Section 3, 4 and 5 of the CST Act and the goods covered by Sections 14 and 15 of the CST Act as well as the goods which are exempt from the tax under the Sales Tax Legislation of the State. The value of the goods involved in the execution of a

works contract will have to be determined after making these deductions and exclusions from the value of the works contract.

73. One of the contentions raised by Mr. Gulati, learned Senior Counsel for the petitioner is that the Assessing Officer cannot add the turnover of sub-contractor to the turnover of the petitioner-company. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court in the case of **State of A.P. v. Larsen & Toubro Ltd.** reported in **(2008) 9 SCC 191.**

74. On going through the said judgment, we find that L & T Limited was engaged in executing the civil, mechanical and other building works throughout India, entered into a contract with its clients and with consent of the clients, they assigned certain parts of the works to the sub-contractors. L&T placed orders with such sub-contractors on agreed price inclusive of applicable taxes. The overall work was done under the supervision of the consultants nominated by the contractee (clients of the L&T). The sub-contractors were registered dealers who purchased goods and chattels like bricks, cement and steel and wherever necessary supply and erect equipments such as lifts, hoists, etc. The materials were brought to the site. They remained the property of the sub-contractors. The site was occupied by the contractors. The materials were erected by the sub-contractors. Under such circumstances,

L&T was served with a notice in which it was alleged that the company has failed to disclosed the sub-contractors' turnover of Rs. 1,11,53,05, 835/- in the returns filed up to 31.01.2006 for the period 01.04.2005 to 31.01.2006. In reply, L&T submitted that under Section 4(7)(a) of the Andhra Pradesh Value Added Tax, 2005, there was no provision for inclusion of sub-contractors' turnover in the turnover filed by the company; and the scheme of the said Act at the relevant time did not contemplate for the declaration of sub-contractors' turnover and that the sub-contractor was a dealer under the scheme of the Act of 2005.

75. The objections raised by the company in its reply to the show cause notice was rejected by the Assessing Officer and the company was consequently served with an assessment order dated 31.05.2006 raising an additional tax payment of Rs.9,75,89,261/-

76. In the aforementioned facts, the Hon'ble Supreme Court found that the question which was required to be decided as to whether the turnover of Rs.1,11,53,05, 835/- of the sub-contractors is liable to be added with the turnover of L&T. Thus, the dispute in the case of **Larsen & Toubro Ltd.** (supra) was the addition of the sub-contractors' turnover to the turnover of the L&T. The Hon'ble Supreme Court considered the first case of **State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd.** reported in

AIR 1958 SC 560 which necessitated an Amendment of Article 366 of the Constitution of India and the Constitution Bench Judgment of the Apex Court in the case of **Gannon Dunkerley and Co. and others vs. State of Rajasthan** (supra). Having noticed Section 4(7) of the Andhra Pradesh Value Added Tax Act read with Rule 17 of the Rules framed thereunder, their Lordships in the case of **Larsen & Toubro Ltd.** (supra) held in paragraphs '17', '18' and '19' as under:-

> "**17.** The question which is raised before us is whether the turnover of the sub-contractors (whose names are also given in the original writ petition) is to be added to the turnover of L&T. In other words, the question which we are required to answer is whether the goods employed by the sub-contractors occur in the form of a single deemed sale or multiple deemed sales. In our view, the principle of law in this regard is clarified by this Court in *Builders' Assn. of India*[2] as under: (SCC p. 673, para 36)
>
> "*36*. … Ordinarily *unless there is a contract to the contrary* in the case of a works contract, the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building."
>
> **18.** As stated above, according to the Department, there are two deemed sales, one from the main contractor to the contractee and the other from sub-contractor(s) to the main contractor, *in the event of the contractee not having any privity of contract with the sub-contractor(s)*.
>
> **19.** If one keeps in mind the abovequoted observation of this Court in *Builders' Assn. of India*[2] the position

2. (1989) 2 SCC 645 : 1989 SCC (Tax) 317 : (1989) 73 STC 370

> becomes clear, namely, that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away with the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reasoning is based on the principle of accretion of property in goods. It is subject to the contract to the contrary. Thus, in our view, in such a case, the work executed by a sub-contractor, results in a single transaction and not as multiple transactions. This reasoning is also borne out by Section 4(7) which refers to the value of goods at the time of incorporation in the works executed. In our view, if the argument of the Department is to be accepted, it would result in plurality of deemed sales which would be contrary to Article 366(29-A)(*b*) of the Constitution as held by the impugned judgment of the High Court. Moreover, it may result in double taxation which may make the said 2005 Act vulnerable to challenge as violative of Articles 14, 19(1)(*g*) and 265 of the Constitution of India as held by the High Court in its impugned judgment."

77. A further reading of the **Larsen & Toubro Ltd.** (supra) would show that after the impugned judgment in the said case, the Department has amended Rule 17 of the Andhra Pradesh VAT Rules, 2005 vide Government Order dated 20.08.2007. The position had been clarified vide Rule 17(1)(c) (as amended) saying that where a VAT dealer awards any part of the contract to a registered sub-contractor, no tax shall be payable on the consideration paid for the sub-contract. Therefore, their Lordships

were of the view that the principle to be adopted in all such cases is that the property in the goods would pass to the owner/contractee on its incorporation of the works executed. It is evident that the **Larsen & Toubro Ltd.** (supra) was decided on the facts of the said case. The present case which we are dealing are having a completely different fact situation. In our considered opinion it is not a case where the Assessing Officer has added the turnover of the sub-contractors to the turnover of the petitioner-company. The submission of learned Senior Counsel on this point is misplaced and the same is liable to be rejected.

Relevant clauses of the contract

78. We have discussed the law on the subject, particularly, the developments which have taken place by virtue of 46th Constitutional Amendment. We have briefly noticed the facts of the case as appearing on the records, however, at this stage it would be relevant to refer certain clauses of the agreement dated 10.02.2009 entered into between the Railways and the petitioner. Annexure 'C-III' of the Agreement dated 10.02.2009 contains the name of work : Construction of steel superstructure and other ancillary works of rail cum road bridge across river Ganga at Patna. The description of items have been mentioned in tabular form which we reproduce hereunder:-

Sl. No.	Description of Item	Unit	Quantity	Estimated Rate (Rs)	Amount(Rs.)
1.	Supply of structural steel at the site of work to the extent required for use in the work as per drawings, specifications, contract conditions and direction of Engineer. The quoted rate shall include all costs, taxes, duties, etc. transportation, storing and wastage and all other incidental charges.				
(a)	Structural steel conforming to IS 2062: 2006 E 350 Cu (Fe 490) or equivalent, fully killed and normalised/ controlled cooled and of cooper bearing quality, as specified in item no. 5.1(A) of Chapter-IX of these documents.	Per MT	52800.00	72589.00	3832699200.00
(b)	Structural steel conforming to IS 2062: 2006 E 250 B (Fe 410W) or equivalent fully killed and normalised/ controlled cooled, as specified in item no. 5.1(B) of Chapter-IX of these documents.	Per MT	20460.00	59426.00	1215855960.00
				Total of Schedule: "C-III" Rs.	504,85,55,160.00

79. The agreement entered into between the petitioner-company and the sub-contractor shows that it was for assembly erection launching of (18 x 123 m) +(1x64m) span triangulated steel girders for new rail-cum-road bridge cross river Ganga at Patna from Dighaghat end (South end) including transporation of fabricated components of (17x123m + 1x64m) span from fabrication workshop at Dighaghat end and (1x123m) span from fabrication workshop at Pahlejaghat end of river Ganga to launching site including casting of RCC pedestals and final coat of painting. The Schedule of items shows the quantity of 36630 MT and the rate quoted is Rs.29,000/- per MT, thus, the total amount of

Sub-contract comes to Rs.106,22,70,000/- the rate for (i) 123m C/C span girders and (ii) 64m C/C span girders and casting of RCC Pedestals have been provided separately giving total cost of works Rs.107,08,70,000/-.

80. The scope of work under clause 1.5 contains the principal items of work covered by the contract. It is stated that the list is only indicative and the work is to be done in accordance with detailed tender/contract conditions, approved drawings and direction of Engineer etc. as stipulated in these documents. It includes (i) preparation of shop/fabrication drawings for fabrication of steel work based on approved drawings and (ii) supply of cement, reinforcement steel and structural steel to the extent covered under Schedule C-I, C-II and C-III respectively. The transportation of structural steel supplied by the Railways in terms of the contract conditions. Fabrication of steel work including shop coats of the paint. Additional shop coat of paint may have to be provided at contractor's cost if girders components remain for more than 4 months in the fabrications shops. Transport of all steel work and accessories from the fabrication shop to bridge site which includes carriage by Railway/road, all handling in the fabrication shops and at bridge site, insurance against loss or damages in transit, if any, stacking at site custody till required for erection in

case of transportation of longer members from shop to site of work requiring special rolling stock with match/dummy truck, are some of the terms of the scope of work.

81. As regards recovery of Sales Tax, clause 34 of the agreement reads as under:-

> "**34. Recovery of Sales Tax:**
> For the work executed in the State of Bihar, Jharkhand, MP and UP, Sales Tax on Works Contract will be recovered at the source from the Gross amount of each bill of the contractor as applicable. The present rate is 4% of gross work value."

82. The contract provided for supply of materials i.e. cement, reinforcement steel and structural steel required for the work.

83. In terms of the contract, the cost of all materials, fabrication, painting, temporary erection and testing at the contractor's site workshop, packing and delivery at the site of work as specified in the schedule, is to be included in the price quoted on the tender. Further any fittings, accessories or apparatus which may not have been mentioned in the specification, but which are considered necessary for the execution of this work are to be provided by the contractor without any extra payment for completion of work in all respects.

84. The contract provides for fabrication and manufacturing in clause 5.2 which are being reproduced hereunder:-

> **"5.2 FABRICATION AND MANUFACTURING**
> (i) The whole work shall be representative of the highest class of Workmanship. The greatest accuracy

shall be observed in the design, manufacture and erection of every part of the work to ensure that all parts will fit accurately together on erection and similar parts shall be strictly interchangeable.

(ii) The contractor shall maintain steel tapes of approved make for which he must have obtained a certificate of accuracy from any National Test House or Govt, recognized institution competent to do so.

(vi) Rolled materials before being laid off on worked, must be made straight. If straightening or flattening is necessary it shall be done by method that will not damage the material. Material having sharp kinks and bends will be rejected.

(vii) Tolerance- The tolerance in fabrication shall be in accordance with as mentioned in Appendix -II of RDSO's booklet B-1-2001

(viii) Fabrication records - The records of fabrication shall be maintained in the register as per format given in Appendix-I of RDSO's Booklet B-1-2001 or as specified by the Engineer.

(ix) Flattening and straightening - All steel materials, plates, bars and structures shall have straight edges, flat surfaces and be free from twist. If necessary, they shall be cold straightened or flattened by pressure before being worked or assembled unless they are required to be of curvilinear form. Pressure applied for straightening or flattening shall be such as it would not injure the material and adjacent surfaces or edges shall be in close contact or at uniform distance throughout.

(x) Flattening or straightening under hot condition shall not be carried out unless and until authorized and approved by inspecting officer/agency and Railways.

(xi) The contractor may fabricate the steel work at his workshop at the site of the work or at any of his other workshops. The tenderer must inspect the approach

roads right upto/from site of the workshop and should ensure that it would be possible for him to transport the materials by road. The site, layout and details/composition of the workshop(s) for fabrication works must be passed/approved by Engineer/RDSO/Inspection agency as authorized by CAO/Con or Chief Engineer/Con, before commencing fabrication works.

(xii) The responsibility of the custody of the Railway materials, in Contractor's site workshop will remain with contractor till the completion of work and then handed over to the Railway, after completion of the work."

85. The contract also provides for declaration of designated fabrication/assembly yard as a part of site. Relevant clause in the agreement (39) reads as under:-

"**39. Declaration of designated fabrication/assembly yard as a part of site:**

Railway may necessary declaration on specific request of the contractor subject to the condition that the workshop area are earmarked exclusively for fabrication of girder components for this bridge with separate entry/exit arrangements. This is with further stipulation that such an arrangement should he acceptable to Excise department by way of a no-objection certificate. Necessary follow up with Excise Department will be solely the contractor's responsibility. In the event of Excise Department not agreeing to such an arrangement, the contractor shall not have any claims whatsoever, and shall pay excise tax and other extant taxes as per extant rules within quoted rates and nothing extra would be payable to them on this account."

86. From the aforementioned conditions which have been briefly taken note of from the contract document, this Court finds that in fact a workshop is to be established for fabrication of girder components for the bridge with separate entry/exit arrangements and in case, the Excise Department does not agree to such an arrangement, the contractor shall not have any claims whatsoever and shall pay excise tax and other extant taxes as per extant rules. It is, thus, evident that the structural steel is only one of the items which is used in the fabrication work. Fabrication of girders and its accessories are to be carried out by the contractor in his factory premises or in a well established fabrication workshop to be set up by the contractor at the bridge site.

Opinion of the Court

87. On perusal of the documents available on the record, we are of the considered opinion that the Assessing Officer-Respondent No. 2 has rightly held that the petitioner had got the assembly erection, launching, fabrication work through the sub-contractor for which the petitioner paid sum of Rs.172,15,39,774.61/-. It is recorded in the impugned order that the representative of the petitioner admitted that these expenses were incurred in course of conversion of structural steel into steel structure by fabrication work. Keeping in view the judgment of the

Hon'ble Supreme Court in the case of **Gannon Dunkerley and Co. (1993) 1 SCC 364** (supra), paragraph '47' quoted hereinabove, we take a view that the cost of transportation launching and installation at the site are the part of the cost of steel structure which have been transferred in course of execution of works contract, therefore, respondent no. 2 has not committed any error in taking a view that the claim of the petitioner for deduction of Rs. 1,72,15,39,774.61/- is liable to be rejected.

88. The contentions raised with regard to the twin tests of transformation and marketability are also getting satisfied from the materials on the record. To us, it appears that the fact that the petitioner has undertaken to do the complete works in the contract and i.e. in the case of the works contract for which the petitioner is paid would make it clear that the ultimate transfer of the property in goods occurred when the goods were incorporated in the works. In the case of ***Quippo Energy Ltd.*** *(supra),* the Hon'ble Supreme Court has considered the tests of transformation in the facts of the said case whether the imported gensets and power packs were two different commodities with distinct constituent elements, structure and functional utility. In the present case, while we find that with the fabrication of structural steel, the distinct constituent, elements and structure are incorporated so as to make it a functional utility.

Once the structural steel is transformed with the fabrication and installation/erection in terms of the works contract, it passes the final tests of marketability. The final test of marketability must be conducted keeping in view the nature of the works contract and the value attached with the same.

89. In ultimate analysis, we find no ground to interfere with the impugned order dated 09.01.2020 of the Assessing Officer (respondent no. 2) and the notice of demand dated 25.01.2020 (Annexure '7 series').

90. These writ applications have no merit. These are dismissed accordingly, however, there will be no order as to cost.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

SUSHMA2/-

AFR/NAFR	AFR
CAV DATE	27.11.2025
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