



202 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-17348-2001 (O&M)
Date of Decision: 13.10.2025**

M/s Himachal Futuristic Communications Limited

...Petitioner

Versus

State of Haryana and Others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Surjeet Bhadu, Advocate,
Mr. Veer Singh, Advocate,
Ms. Sanya Thakur, Advocate and
Ms. Aditi Sharma, Advocate
for the petitioner.

Mr. Ravi Partap Singh, DAG, Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 13.09.2001 (Annexure P-9) whereby Sales Tax Tribunal, Haryana (for short 'Tribunal') has rejected its appeal.

2. The petitioner is engaged in business of trading of Silicon Solar Photovoltaic Cells known as solar cells. The petitioner during 1997-98, 1998-99 purchased 'solar cells' from M/s Usha (India) Limited, Faridabad which was engaged in the manufacturing of aforesaid cells. The seller was duly registered under Haryana General Sales Tax Act, 1973 (for short 'HGST'). The petitioner during aforesaid period purchased cells only from aforesaid manufacturer and further sold as such

within the State of Haryana. The petitioner made sale to registered dealers which is known as RD Sales. Sale was made against Form ST-15. The petitioner filed its returns along with Form ST-15. No tax was charged from buyers because sale was made against Form ST-15. The assessing authority vide order dated 23.03.1999 and 11.08.1999 framed assessment of 1997-98 and 1998-99 respectively. The assessing authority made assessment of solar cells as tax free goods.

3. The Deputy Excise and Taxation Commissioner, Faridabad while exercising *suo motu* powers under Section 40 of HGST revised aforesaid assessment orders. The revisionary authority formed an opinion that solar cells were taxable at first stage being covered under Entry 19 of notification dated 30.12.1987 issued under Section 18 of HGST.

4. The petitioner preferred three appeals before Appellate Tribunal assailing orders passed by revisionary authority. During the pendency of appeals, dispute arose with respect to pre-deposit which was settled by this Court vide order dated 27.07.2001 passed in *CWP No.10610-2001*. The Appellate Tribunal vide impugned order dated 13.09.2001 dismissed appeals of the petitioner holding that petitioner did not furnish ST-14 forms, thus, was not entitled to benefit of exemption and goods in question fall under Entry 19 of notification issued under Section 18 of HGST.

5. Learned counsel representing the petitioner submits that respondent has wrongly held that dry cell includes solar cell. There is fundamental difference between both the products. Use as well as object of both the products is different. Dry cell consist of electricity whereas

solar cell is part of solar panel which is used to generate electricity. The respondent has raised demand against M/s Usha (India) Limited, Faridabad which vindicates stand of the petitioner that it is seller who is liable to pay tax, if any, as first stage dealer.

6. *Per contra*, learned State counsel submits that it is factually correct that demand has been created against M/s Usha (India) Private Limited, Faridabad. Liquidation/insolvency proceedings are pending against M/s Usha (India) Private Limited, Faridabad before National Company Law Tribunal. There is no infirmity in the impugned order. Dry cell includes solar cell. The petitioner is liable to pay sales tax because first stage dealer did not pay. It may be clarified that any order in favour of the petitioner would not affect liability of M/s Usha (India) Private Limited, Faridabad.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. From the pleadings and arguments of contesting parties, following questions arise for consideration of this Court.

- i. Whether 'solar cells' fall within definition of dry cells/batteries?
- ii. Whether petitioner was liable to pay tax despite being second stage dealer?

Answer to Q.No. i) Whether solar cells fall within definition of dry cells/batteries?

9. The petitioner is claiming that expression 'dry cells' does not include solar cells. There is fundamental and functional distinction between both the products. Dry cells store electricity whereas solar cells are used to manufacture electricity from sunlight. Dry cells are commonly used in torch, radio, transistors, camera, watch etc. whereas solar cells cannot be used in aforesaid articles because these cells are used to generate electricity. Dry cells are available in the open market whereas solar cells are sold by enterprises having technical expertise. Solar cell is not substitute of a dry cell. It is a settled proposition of law that while interpreting any entry of a taxing statute, resort should not be to the scientific or technical meaning of such terms but popular meaning or meaning attached to them by those dealing in them should be preferred. In the common and business parlance, solar cells are treated as distinct commodity to dry cells.

10. Learned Tribunal has rejected contentions of the petitioner holding that only difference between conventional dry cells/batteries and solar cells is the medium which is used for generating electrical energy. Solar cells use sunlight for converting it into electric energy whereas dry cells use chemicals or mercury or lithium as medium of converting it into electric energy. There are more similarities in two cells and hardly any distinction. Both kinds of cells are voltaic cells. Thus, the basic object of both the cells is to generate electric energy. Solar cells have a variety of applications like dry cells. It is not that solar energy as a source of power and its potential was not known earlier but the absence of appropriate technology made it a limiting factor. Until such a technology was available which could convert solar energy into electric energy, it was not

commercially viable proposition. It is only in the recent past that such a technology has become available and is being used. Under Central Excise Act, solar cells have been exempted from excise duty. Exempting solar cells from excise duty does not mean that solar cells are different from dry cells. The legislature to promote solar energy has exempted solar cells from excise duty. Though solar cells cannot be used to replace conventional dry cells, it will not be desirable to take a very narrow view and assume that solar cells are not covered under entry of 'all kinds of dry cells'. The legislature has used expression '*all kinds of*' in Entry 19 of notification dated 30.12.1987. The expression '*all kinds of*' in the entry makes intention of the legislature clear. 'All kinds of' must include solar cells otherwise entry should have simply been '*dry cells/batteries/torches*'.

11. From the perusal of Entry 19 of notification dated 30.12.1987, it is evident that expression '*all kinds of*' precedes expression '*dry cells/batteries*'. The Tribunal has concluded that dry cells as well as solar cells are used for the purpose of generation of energy, thus, dry cells include solar cells. Like State of Haryana, State of Tamil Nadu has made dry cells subjected to sales tax at first stage. Like entry in question, there is Entry 10 in the notification issued by State Government. The relevant extracts of the notification issued by the State of Tamil Nadu read as:-

“Section 2. Substitution of First Schedule

2. Substitution of First Schedule.- In the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter referred to as the principal Act), for the First Schedule, the following Schedule shall be substituted, namely:-

*“ THE FIRST SCHEDULE
GOODS IN RESPECT OF WHICH SINGLE POINT TAX IS*

LEVIABLE UNDER SUB-SECTION(2) OF SECTION 3

<i>Sr. No.</i>	<i>Description of the goods</i>	<i>Point of levy in the State</i>
<i>PART-A</i>		
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>PART-B</i>		
<i>XXXX</i>	<i>XXXX</i>	<i>XXXX</i>
<i>PART-C</i> <i>GOODS WHICH ARE TAXABLE AT THE RATE OF 10 PER CENT</i>		
<i>10.</i>	<i>Dry cells, dry batteries, button cells, solar cells of all kinds, parts and accessories thereof including zinc calots and carbon rods.</i>	<i>First sale</i>

12. From the perusal of above quoted entry, it is evident that State of Tamil Nadu has brought dry cells and solar cells in one entry. Both types of cells are subjected to sales tax at first stage. The legislature has used expression 'solar cells of all kinds' besides 'dry cells and dry cell batteries'. This makes it clear that State of Tamil Nadu has accepted that dry cells and solar cells are two different commodities. The Tribunal in instant case has also returned finding to the effect that solar cells and dry cells are two different commodities, however, both are used for the same purpose i.e. generation of electric energy. Dry cells use different medium than solar cells. In case of dry cells, chemicals, lithium and mercury etc. are used as medium whereas in solar cells, sunlight is used as medium. Learned Tribunal, despite noticing contentions of the petitioner as well as use of the product, has recorded finding to the effect that both kinds of cells are used to generate electric energy. It is factually incorrect because dry cells are not used to generate electric energy whereas these cells are used to store electric energy. Energy already stored in the cells is used for operating the equipment/apparatus like watch, radio, transiter, camera etc. whereas in case of solar cells, these

cells are used to generate energy. Dry cells are not parts/components used to generate electric energy whereas solar cells are parts/components of machinery/equipment which is used in the solar power generation. Principally, these are parts of an equipment which is ultimately used to generate electric energy whereas dry cells are parts/component of an equipment like watch, remote, camera to generate output without electricity. The solar cells are not substitute of dry cells. It is not possible to use a solar cell in a watch or transiter or radio. Learned Tribunal noticed this fact still held that dry cells include solar cells.

13. The Tribunal has held that legislature has used expression '*all kinds of*' along with '*dry cell*'. '*All kinds of*' include solar cells otherwise entry should have been '*dry cells/batteries*.' There are multiple types of dry cells and batteries. Nobody can claim that there is only one kind of dry cell or dry battery. There are multiple types of dry cells and dry cell batteries, thus, legislature has used expression '*all kinds of*'. Had the legislature used expression '*all kinds of cells*', the solar cells could be included in the aforesaid entry.

It is axiomatic in taxation jurisprudence that there should be literal and strict interpretation of every entry. The Courts cannot add or subtract any word/expression in the entries of the notification. In the case in hand, the Government has used expression '*all kinds of dry cells/batteries*'. From the functional, commercial and usage point of view, dry cells are different from solar cells. Both cells are not interchangeable. To generate electricity from sunlight, dry cells cannot be used. Similarly, in a radio, camera or watch, solar cells cannot be used.

14. The Tribunal is correct while holding that exemption of solar cells from excise duty does not mean that solar cells and dry cells cannot be one and same commodity. It is discretion and wisdom of Central Government to exempt one kind of cell and tax another. The Central Government to promote generation of solar energy has exempted equipments, parts/components and solar cells used to generate electricity.

Answer to Q.No. ii) Whether petitioner was liable to pay tax despite being second stage dealer?

15. Section 18 of HGST provides that State Government may by notification specify goods on which tax shall be levied at first stage. It further provides that sale of such goods at subsequent stage shall be exempted provided dealer effecting sale furnishes certificate duly filled in and signed by registered dealer from whom the goods were purchased to the effect that tax on such goods has been paid at the first stage. Section 18 of HGST reads as:-

“Section 18

Tax at first stage on sale

The State Government may, by notification, direct that in respect of such goods, other than the goods specified in Schedules C and D, and with effect from such date as may be specified in the notification, the tax under Section 15 shall be levied at the first sale thereof, subject to the conditions and restrictions as the State Government may specify in this behalf, and on the issue of such notification the tax on such goods shall be levied accordingly.

Provided that no sale of such goods at a subsequent stage shall be exempt from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the Assessing Authorities in the prescribed

form and manner a certificate duly filled in and signed by the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage.

Explanation : For the purpose of this sub-section, the first stage of sale in respect of any goods and in relation to any class of dealer shall be such as may be specified by the State Government in the notification.”

[Emphasis supplied]

16. The State Government has issued notification dated 30.12.1987 in exercise of power conferred by Section 18 of HGST. Relevant extracts of said notification read as:-

“Notn. No. S.O. 156/H.A.20/73/S.18/87 Dated 30th Dec.1987

In exercise of the powers conferred by Section 18 of the Haryana General Sales Tax Act, 1973 and all other powers enabling him in this behalf, and in supersession of Haryana Government, Excise and Taxation Department, Notification No.S.O.98/H.A.20/73/S.18/73 dated the 5th May, 1973 as amended from time to time, the Governor of Haryana hereby directs that the tax under Section 15 of the said Act be levied, with effect from the 1st day of January, 1988, at the first stage of sale on the following goods, namely: -

- | | | | | |
|-----|--|-------------|-------------|-------------|
| | <i>XXXX</i> | <i>XXXX</i> | <i>XXXX</i> | <i>XXXX</i> |
| 17. | <i>Washing powder, washing soaps and detergents.</i> | | | |
| 18. | <i>Sanitary goods and fittings.</i> | | | |
| 19. | <i>All kinds of dry cells/Batteries, torches.</i> | | | |
| 20. | <i>Clocks, time pieces and watches.”</i> | | | |

17. From the perusal of Entry 19 of aforesaid notification, it is evident that all kinds of dry cells/batteries are covered by Section 18 of HGST. These goods are liable to tax at first stage. Second stage dealer as per proviso to Section 18 cannot sell goods without tax if he has not

received declaration from his seller (first stage dealer) to the effect that first stage dealer has paid tax.

18. The petitioner during 1997-1998 and 1998-1999 cleared goods without payment of tax. The goods were cleared treating as RD Sale. Section 27(1)(ii) excludes sale to registered dealers subject to the condition that selling dealer furnishes in the prescribed form a declaration duly filled and signed by the purchasing dealer containing such particulars on such forms and in such manner, as may be prescribed. Relevant extracts of Section 27 read as: -

“Section 27

Taxable Turnover

(1) In this Act, the expression, “taxable turnover” means that part of a dealer’s gross turnover during any period which remains after deducting therefrom his turnover during that period-

(a) on account of-

(i) sale and purchase of goods specified in Schedule B;

(ii) sales to registered dealers of goods other than the sale of goods specified in Schedule C and of goods liable to tax at the first stage of sale under sections 17 and 18;

Provided that no dealer shall be entitled to make any deduction from his turnover in respect of a sale made by him to a registered dealer with whom composition under Section 26 has been made and is in force;

Provided further that in case of such sales, the selling dealer, furnishes, in the prescribed manner, a declaration duly filled and signed by the purchasing dealer, containing such particulars on such form and in such manner as may be prescribed.

Provided further that for the purposes of allowing deduction under this clause, the assessing authority or any other person appointed to assist the Commissioner under sub-section (1) of section 3 may examine the genuineness or otherwise of any such sale or declaration with reference, among other things, to the financial position, capacity to make purchases, nature and extent of business, and subsequent disposal of goods by the registered dealer to whom the sale is shown to have been made against declaration;”

[Emphasis supplied]

19. Petitioner during the period in question received Form ST-15 and effected sale without payment of tax. The assessing authority accepted turnover of solar cells as RD sales against Form ST-15 and did not charge tax, thus, it is undisputed that petitioner at the first instance purchased goods from a manufacturer who did not charge tax and petitioner further sold goods against Form ST-15 without charging tax. At the cost of repetition, it is hereby noticed that as per statutory provisions, sale of goods to registered dealer against ST-15 is exempt.

20. During the course of proceedings before this Court, the authorities produced copy of report disclosing that assessing authority, Faridabad (East) has framed assessment of M/s Usha (India) Limited, Faridabad for the year 1997-1998 and 1998-1999. The assessing authority has treated ‘solar cell’ as an item covered under Entry 19 of notification issued under Section 18 of HGST. The assessing authority has created demand of Rs.2.86 Crores under HGST and 28.03 Lakhs under Central Sales Tax Act, 1956 (for short ‘1956 Act’). Assessment of M/s Usha (India) Private Limited, Faridabad as first stage dealer and creation of

demand indicates that assessing authority has created demand against manufacturer- M/s Usha (India) Limited, Faridabad alleging that they were liable to pay tax as first stage dealer and by impugned orders demand against petitioner has been created alleging that manufacturer-first stage dealer did not pay tax, thus, they are liable to pay tax.

21. As per proviso to Section 18, second stage dealer is liable to pay tax on subsequent sales if he has not received declaration from first stage dealer to the effect that tax has already been paid. In the instant case, at the time of sale by manufacturer as well as petitioner, there was understanding that goods are general goods and sale can be made to registered dealer against form ST-15. The State authorities were also of the same opinion which is evident from the fact that Form ST-15 was issued to buyers of the petitioner who in turn submitted to the petitioner. It is undisputed that petitioner submitted ST-15 form received from customers along with returns and Assessing Authority accepted those forms. Till the initiation of proceedings under Section 40 by revisionary authority, opinion of all the stakeholders was that goods are not liable to tax at first stage.

22. The revisionary authority as well as Appellate Tribunal has held the petitioner was liable to pay tax because manufacturer i.e. first stage dealer did not pay tax on goods in question. The authorities have categorically held that goods in question fall under Entry 19 of notification issued under Section 18 of HGST. As per Section 18 read with notification issued hereunder, first stage dealer is liable to pay tax. Second stage dealer is liable to pay tax on subsequent sale if buyer has not furnished declaration to the effect that goods are tax paid. In the case

in hand, the first stage dealer did not pay tax. The authorities issued ST-15 Form to buyers of petitioners and petitioners furnished those forms along with returns. The respondent authorities, at a later stage, formed an opinion that goods are covered by notification under Section 18, thus, are liable to tax at first stage. The respondent has made assessment against manufacturer as well as petitioner whereby demand against manufacturer has been created holding that being first stage dealer, he is liable to pay tax and demand against petitioner has been created holding that first stage dealer has not paid tax, thus, he is liable to pay tax. The petitioner sold goods against ST-15 means buyer accepted his liability. If buyer has already paid tax, there is no question of demand of tax from petitioner as well as manufacturer. Neither petitioner nor respondent has placed on record assessment orders of buyers of petitioner. It is undisputed that petitioner enclosed ST-15 forms along with returns. These forms were issued by assessing authority of buyers of the petitioner as Form ST-15 is issued by Assessing Authority. It is printed under the authority of State Government. By furnishing ST-15 Form, the buyer undertook responsibility to pay tax in case of subsequent sale other than sale to a registered dealer.

23. The respondent has relied upon proviso to Section 18 of HGST to create demand against the petitioner. As per common understanding of the stakeholders, the petitioner furnished Form ST-15 along with returns. It did not furnish Form ST-14 because manufacturer as well as subsequent buyers were of the opinion that goods are not liable to tax in their hand. Had objection been raised by authorities at the first instance, the petitioner could ask first stage dealer to supply requisite

declaration. The petitioner at the subsequent stage could not ask first stage dealer to furnish declaration especially when manufacturer was also contesting the issue. The respondent has created liability against the manufacturer-first stage dealer. The respondent by creating demand against manufacturer has established that it was manufacturer-first stage dealer who was liable to pay tax, if any. The respondent cannot raise demand against petitioner as well as manufacturer. The respondent has not further taken care of the fact that Form ST-15 was issued by Assessing Authority to buyers of petitioner. The respondent was duty bound to ascertain status of buyers of petitioner as buyers had furnished Form ST-15 and admitted their liability as traders of general goods. Had respondent conducted enquiry at the end of buyers of petitioner, the instant litigation could be avoided.

24. A Division Bench of Madras High Court in ***Govindan & Co. v. The State of Tamil Nadu, 1974 SCC OnLine Mad 353*** has held that to claim benefit of tax exemption on the ground that sales are second sales, the assessee does not need to prove that seller in fact has paid tax and it is enough to show that earlier sales are taxable and tax is really payable by the seller. Relevant extracts of the judgment read as: -

“Though the order of the Tribunal is one upholding the remit order passed by the Appellate Assistant Commissioner, the learned counsel for the petitioners contends that the direction of the Tribunal that the petitioners are to prove that the twelve dealers from whom they purchased the goods were real persons and that they had in fact paid the tax on the iron and steel is not correct and that it is not the duty of the petitioners to prove that their sellers have in fact paid the tax on their sales. The

learned counsel appears to be right in his submission that the petitioners who claimed exemption from tax on the ground that their sales are second sales are bound to show that there has been an anterior taxable sale and that they need not prove that tax had in fact been paid on those anterior sales. To claim the benefit of tax on the ground that their sales are second sales, the petitioners need not show that their sellers have in fact paid tax and it is enough for them to show that the earlier sales are taxable sales and that the tax is really payable by their sellers. Therefore, the direction given by the Tribunal that the petitioners are to show that the tax has been paid by their sellers on the iron and steel goods sold by them to the petitioners does not appear to be correct.

We, therefore, modify the direction contained in the last portion of the order of the Tribunal as follows:

"The appellant is permitted to adduce whatever evidence it chooses to show that the dealers in question were real persons and that their sales are taxable under the Act."

With this modification, the tax case is dismissed. There will be no order as to costs.

Petition dismissed."

It is apt to notice that SLP filed against aforesaid order stands dismissed by Hon'ble Supreme Court.

25. A Division Bench of Andhra Pradesh High Court in ***B. Narasaiah and Co. v. State of A.P., 2001 SCC OnLine AP 585***, relying upon its earlier judgment in ***State of A.P. v. Thungabhadra Industries Ltd. [1986] 62 STC 71*** has held that tax cannot be demanded from buyer on the ground that vendor did not pay assessed tax. If vendor is liable to pay tax and has failed to discharge its liability, it is always open for the authorities to proceed against the vendor and recover the tax by the mode known to law. Relevant extracts of the judgment read as:-

“4. This Court in *State of A.P. v. Thungabhadra Industries Ltd.* [1986] 62 STC 71 dealing with a claim of registered dealer, who claimed as a second seller of groundnut oil, taxable at the first point of sale within the State of Andhra Pradesh, under the provisions of the Act, laid down two principles to allow the exemption. They are (1) that the first seller should be a real and identifiable dealer within the State; and (2) that mere non-payment of tax by the first seller within the State does not shift the liability to pay tax on the second seller. In the light of these principles laid down by this Court, with which we are in respectable agreement, when we look at the facts of this case, it cannot be said that the petitioner failed to establish that he made the purchase from a real and identifiable dealer within the State. There is no controversy that M/s. Bantu Chinnaiah & Co., Nizamabad, is a registered dealer under the provisions of the Act and its identity is also not in dispute. As rightly pointed out by the learned Special Government Pleader for Taxes, it is true that there is no satisfactory evidence placed before the Tribunal or before us to show that the vendor of the petitioner filed returns including the sale of turmeric in the turnover. However, the department assessed the tax on the gross turnover of Rs. 8,85,500 and determined the tax of Rs. 63,313.25 paise. The reason that the vendor of the petitioner did not pay the assessed tax cannot be a valid ground to disallow the claim of the petitioner. We say this because under the statute, if the vendor is alone is liable to be taxed and if he fails to discharge the said liability, it is always open for the authorities under the Act to proceed against him and recover the same by the mode known to law. But that circumstance can never be a valid and tenable ground to disallow the exemption claimed by the petitioner.”

26. It is settled law that no one can be asked to do something which he cannot do. Hon'ble Supreme Court in '**Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors.**', (2020) 7 SCC 1 has clearly held that law does not demand the impossible. When there is disability that makes it impossible to obey the law, the alleged

disobedience of law is excused. The law does not compel one to do that which one cannot possibly perform. Where the law creates a duty or charge and a party is disabled to perform it without any default in him and has no remedy over it, there the law will in general excuse it. When the performance of formalities prescribed by statute has been rendered impossible by circumstances over which a person entrusted has no control, the circumstances will be taken as a valid excuse.

27. In the wake of above discussion and findings, the questions raised heretofore are answered as:

- (i) Solar cells do not fall within description of all kinds of dry cells.
- (ii) Petitioner being second stage dealer was not liable to pay tax.

28. In the backdrop, the instant petition is hereby ***allowed*** with all consequential benefits.

(JAGMOHAN BANSAL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

13.10.2025

Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No