IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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O R D E R

1.S.B. CIVIL REVISION PETITION NO.105/2007 -HINDUSTAN ZINC LTD VS. COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE, UDAIPUR AGAINST THE JUDGMENT AND ORDER DATED 6.3.2007 , PASSED BY THE RAJASTHAN TAX BOARD, AJMER IN APPEAL NO.114/2005.

2.S.B. CIVIL REVISION PETITION NO.104/2007 -HINDUSTAN ZINC LTD VS. COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE, UDAIPUR AGAINST THE JUDGMENT AND ORDER DATED 6.3.2007 , PASSED BY THE RAJASTHAN TAX BOARD, AJMER IN APPEAL NO.115/2005

3.S.B. CIVIL REVISION PETITION NO.117/2007 -HINDUSTAN ZINC LTD VS. COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE, UDAIPUR AGAINST THE JUDGMENT AND ORDER DATED 6.3.2007 , PASSED BY THE RAJASTHAN TAX BOARD, AJMER IN APPEAL NO.59/2007

REPORTABLE

4.S.B. CIVIL REVISION PETITION NO.118/2007 -HINDUSTAN ZINC LTD VS. COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE, UDAIPUR AGAINST THE JUDGMENT AND ORDER DATED 6.3.2007 , PASSED BY THE RAJASTHAN TAX BOARD, AJMER IN APPEAL NO.1932/2006

5.S.B. CIVIL REVISION PETITION NO.119/2007 -HINDUSTAN ZINC LTD VS. COMMERCIAL TAXES OFFICER, SPECIAL CIRCLE, UDAIPUR AGAINST THE JUDGMENT AND ORDER DATED 6.3.2007 , PASSED BY THE RAJASTHAN TAX BOARD, AJMER IN APPEAL NO.1933/2006

DATE OF ORDER : 29th Feb., 2008

PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Dinesh Mheta, for the petitioner.
Mr VK Mathur]
Mr. Rishabh Sancheti], for the respondent.

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BY THE COURT:

The petitioner has raised questions of law in these revision petitions that (i) whether in the facts and circumstances of the case supply of explosives by the petitioner to his contractor for using the same by the contractor in petitioner's mining operation in mining area of the petitioner can be treated to be a sale within the meaning of Rajasthan Sales Tax Act, 1994 (hereinafter referred to as the Act of 1994) and (ii) if answer to question no.(i) referred above is affirmative and it is held that aforesaid supply of explosives is a sale whether such sale is not taxable being subsequent sale within the State of the goods on which tax on first point has already paid and (iii) whether in the facts and circumstances of the case, the explosives for the purpose of blasting in the petitioner's mine could not have been purchased at concessional rates against declaration form ST17.

The petitioner is a company duly registered under the provisions of the Rajasthan Sales Tax Act, 1994, Rajasthan VAT Act, 2003, Central Sales Tax Act, 1956 and the Rules framed thereunder. The company engaged in manufacture of lead, zine and allied metals and it has is own mines. In the regular course of business, the petitioner company awarded various mining contracts to the contractors wherein cement and steel are required to be used. The petitioner company is required to use explosives for winning minerals from its mines. This operation includes explosions and is got done on job work basis in the field of the petitioner under strict control and supervision of explosive experts. For use of explosives,the petitioner company is required to obtain licence from the competent authority under the Explosive Act, 1884 and as per the statutory condition of licence, the petitioner cannot re-sale the explosives purchased for its own use. The petitioner has placed on record the copy of the explosive licence. The petitioner company purchased the explosives against declaration form ST17 on payment of concessional rate of tax

as stipulated under Section 10(1) and 10(3) of the Act of 1994. According to the petitioner explosives have been mentioned in the certificate of registration of the petitioner company as raw-material and, therefore, the petitioner is authorized to purchase the same at concessional rate of 4% against declaration form ST17.

The petitioner's company's regular assessment for the tax under the provisions of the Act of 1994 for the assessment yearS 1999-2000, 2000-2001, 2001-2002, 2002-2003 AND 2003-2004 were framed by the assessing authority, but notices were issued for re-opening of assessments under Section 30 of the Act of 1994 to the petitioner on the ground that supply of material such as cement, iron, steel and explosives to various contractors firms is sale within the meaning of Section 2(38) of the Act of 1994. The petitioner submitted reply and took the plea that the goods have not been used for the purpose other than for which they have been procured and there is no misuse of declaration form.

The petitioner submitted that ownership of

the goods had never been transferred to the contractor and the contractor had returned the remaining goods as such and no property stands transferred to the contractor from the petitioner, therefore, the transaction cannot amount to sale of the goods liable for tax under the provisions of the Act of 1994. The assessing authority rejected the petitioner's contention and passed assessment orders for various years. Copies of the assessment orders passed for various years have been placed on record on these revision petitions, which are dated 7.8.2003, 27.9.2005 and 15.2.2006 in total for five years.

Aggrieved against the above assessment orders passed by the assessing authority, the petitioner company preferred separate appeals before the Dy. Commissioner (Appeals) Commercial Taxes, Udaipur, which were dismissed by Dy. Commissioner (Appeals) by order dated 6.1.2005 (two appeals), dated 21.6.2005 (two appeals) and dated 5.10.2006 (one appeal). The petitioner preferred further appeals before the Rajasthan Tax Board, Ajmer, which too were dismissed by the Rajasthan Tax Board, Ajmer vide order dated

6.3.2007, hence, these revision petitions raising common questions of law referred above.

According to learned counsel for the petitioner the petitioner has its own mining area. In the mining operation certain goods including explosives are required for which the petitioner company obtained licence from the competent authority under the relevant provisions of law which is apparent from the copy of the licence placed on record by the petitioner. The petitioner company cannot sale the explosives and has not sold it out to anybody. The petitioner company gave these explosives to its contractor only for using the explosives in petitioner's own mining operation. The explosives exhausts in the mining operation and after its use nothing remained in the hands of the contractor. As per the contract between the petitioner and its contractor, the contractor could have used the explosives within the mining field of the petitioner and that too, under the strict control and supervision of the explosives experts. Therefore, no legal title of the goods had passed on to the contractor. The petitioner company could have

used its explosives through its own labour for its own consumption and as per sub-section (3) of Section 10, the petitioner was entitled to purchase the goods for its mining operation on payment of lower rate of tax i.e., @ 4% on furnishing a declaration duly filled under form ST14. The petitioner consumed the explosives in its mining operation is not in dispute, therefore, the petitioner fulfilled all the conditions of sub-section (3) of Section 10 of the Act of 1994 and has not violated the conditions as provided by sub-section (3) of Section 10 of the Act of 1994 after purchase of the goods i.e., explosives. In view of the above fact, the first contention of the petitioner is that the explosives in the hands of contractor is not the goods sold to the contractor and secondly, even if it amount to sale then as per sub-section (3) of Section 10 of the Act of 1994, the sale is not prohibited to a person who uses the said sold goods only for the purpose and use of the seller. Learned counsel for the petitioner tried to distinguish allege sale of explosives by the petitioner company to its contractor for

carrying out work of petitioner with the sale of goods to other person who may not use the goods for carrying out the manufacture in process or mining operation of the seller and submitted that in former cases there cannot be violation of sub-section (3) of Section 10 of the Act of 1994 because of the reason that the petitioner company is required to satisfy that the goods purchased by the petitioner company by submitting a declaration under form ST17 were required by it and has been used for its mining operation. Sub-section (3) of Section 10 of the Act of 1994 nowhere provides that in case the goods are required by the assessee and has been used for the assessee's own work but through third party then the assessee is not entiled to get benefit of payment of tax at lower rate as provided under sub-section (3) of Section 10 of the Act of 1994.

Learned counsel for the petitioner further submitted that the petitioner purchased the goods i.e., explosives after payment of tax under sub-section (3) of Section 10 of the Act of 1994 though on payment of lower rate of tax under sub-section (3) of Section 10 by

furnishing declaration form ST 17, therefore, the explosives in the hands of the petitioner is tax paid goods, therefore, even if it is held that handing over of the explosives to the contractor of the petitioner company for the purpose of mining operation within the mining area of the petitioner amounts to sale then that sale is sale of tax paid goods and the tax can be levied within the State only ones and not on subsequent sales. Learned counsel for the petitioner relied upon the judgment of this court delivered in Shekhawat Explosives Vs. State of Rajasthan & Ors reported in 2003(5) Tax Update 155. Facts of which case was slight different but learned counsel for the petitioner relied upon this judgment in support of his argument that since the explosives exhausts in the mining operation therefore, cannot be transferred to the petitioner company by the contractor, therefore,the goods in the hands of the contractor is not a commodity acquired by sale.

Learned counsel for the petitioner also relied upon the judgment of this Court delivered in the case of Bharat Sanchar Nigam & Anr. vs.

Union of India & Ors reported in 2006(14) Tax Update 185.

Learned counsel for the revenue submitted that in the present case the petitioner not only delivered the explosives to its contractor but also recovered the cost of the explosives from the contractor and this fact is not in dispute. Therefore, the transaction of sale stands completed by delivery of goods to the contractor engaged by the petitioner for execution of their works contract and receipt of the sale consideration by the seller -petitioner company. Sale is not determined from the fact that how the purchaser (contractor) has used or consumed the goods or where the purchaser (contractor) has used the goods. The completed sale transaction is not affected because of total exhausts of the sold goods after reaching it in the hands of purchaser, therefore, where and how the purchaser; the contractor of the petitioner company, has used the explosives is absolutely irrelevant and transaction stands concluded before goods used by the contractor.

Learned counsel for the revenue as well as learned counsel for the petitioner both tried to

interpret sub-section (2) of Section 38 of the Act of 1994 which defines “sale” to their favour. Petitioner's counsel submitted that the petitioner could not have transferred the property and was not competent to pass over the “title in goods” to the contractor by virtue of statutory bar against sale of explosives, therefore, handing over of the explosives to the contractor without passing on title vesting in the purchaser, cannot amount to sale whereas learned counsel for the revenue submitted that this issue specifically was under consideration before the Hon'ble Apex Court in the case of Karya Palak Enigneer, CPWD, Bikaner Vs. Rajasthan Taxation Board, Ajmer & Ors reported in (2004) 7 SCC 195 and the Hon'ble Apex Court in a case where there was no transfer of title of property in the contractor and there was a contract that the goods shall remain on the work site of the assessee and the contractor shall not remove the said material from the work site and shall be opened for inspection of the assessee and where the contractor was bound to return the unused materials to the principal even then Hon'ble Apex Court held that by the

use or consumption of the materials in the construction work, property thereof, held, passed to the contractors and consideration therefor passed to CPWD by way of adjustment in the bills and said transaction was held amounting to sale within the meaning of Section 2(38) of the Rajasthan Sales Tax Act, 1994 and it has been held that sales tax could be levied on the said transaction.

I have considered the rival submissions of learned counsel for both the parties and perused the facts of the case as well as impugned orders.

Substantially the facts are not in dispute and which may be recapitulated here again, that the petitioner-Company in its regular course of business, awarded mining works contract to the contractors and supplied various goods to the contractors and we are concerned with the supply of explosives to the contractors by the petitioner-Company in these matters. The revenue treated the supply of those explosives to the contractors by the petitioner as transaction of sale, as defined under sub-clause (ii) of sub-section (38) of Section 2 of the Rajasthan Sales

Tax Act, 1994. The contention of the petitioner is that the said transaction is not sale for the reasons mentioned above.

Sub-clause (ii) of sub-section (38) of Section 2 of the Act of 1994 is as under:-

> " (38) "Sale" with all its grammatical variations and cognate expressions means every transfer of property in goods by one person to another for cash, deferred payment or other valuable consideration and includes-
>
> (i) ....
>
> (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
>
> (iii) ....
>
> (iv) ....
>
> (v) ....
>
> (vi) ...."

When the word is defined in the Act itself then there is no need to take help of definition given in any other Act nor dictionary meaning is needed to see the meaning of the word. When any transaction is specifically included in any definition in the Act that transaction is required to be given its effect. Section 38(ii) unambiguously provides that (i) any transfer of

property in goods by one person to another person (ii) for cash, deferred payment or for valueble consideration is sale and (iii) includes a transfer of property in goods in whatever form involved in the execution of works contract.

In case in hand, the property was delivered to the contractor. The property was for use in the works contract only. The cost of explosive was separately charged from the contractor by deducting the value of the explosive from bills of contractor. Therefore, all the ingredients of sale as required by the sub-clause (ii) of sub-section 38 of Section 2 of the Act of 1994 are present in the transaction. Hence, the transaction in this case is sale of goods by petitioner to the contractor in view of unambiguous and clear definition of sale given in Section 2 (38)(ii) of the Act of 1994.

A similar question as above, arose before Hon'ble the Supreme Court in the case of Karya Palak Engineer, CPWD, Bikaner v. Rajasthan Taxation Board, Ajmer and others ((2004) 7 SCC 195), as is raised in these revision petitions. It was contended in above case that under the

terms and conditions of the contract, the material supplied to the contractors remained the absolute property of the Union and the same could not be removed from the site of the work and were at all times open to inspection by the authorities as per the terms and conditions of the contract, if there remains surplus material, then those materials were required to be returned by the contractors. Therefore, the title in the property never transferred to the contractors, and the contractors remained only custodian of such material. It was also contended that no specific consideration was paid for the supply of the goods, therefore, the supply of materials to the contractors did not amount to sale and could not be subjected to sales tax. Hon'ble the Supreme Court, after considering the above pleas, rejected all the contentions following the earlier decision of the Hon'ble Supreme Court delivered in the cases of N.M Goel & Co. v. STO ((1989) 1 SCC 335) and Cooch Behar Contractors' Association v. State of W.B. ((1996) 10 SCC 380). In N.M.Goel's case (supra), Hon'ble the Supreme Court held that “by use or consumption of material in the work of

construction, there was passing of property in the goods to the assessee from PWD. By appropriation and by the agreement, there was a sale as envisaged in terms of clause of the contract." Here in present cases also, it is not in dispute that the explosives were handed over physically to the contractors and the petitioner-Company received the cost of explosives from the contractor by deducting the cost of explosives from bills of contractor, therefore, with the passing of the goods in the hands of the contractors from the petitioner for consideration, the transaction of sale stands concluded. Transaction is not dependent upon the ultimate use of the goods, transferred to the contractors, as the goods which may have been sold to the contractors for valuable consideration, may be returned to the Principal, if remained unused and the goods in different form may be returned to the Principal and the goods may be consumed or exhausted in the works contract. The transaction of sale completes with the passing of the goods for consideration in the hands of the contractors. Hon'ble the Supreme Court even in a case rejected the

contention of the assessee that title in the property never got transferred to the contractor and the contractor remained only a custodian of such materials and held that the transaction is sale.

In view of the above, so far as the first contention of the learned counsel for the petitioner is concerned, it has no force and in view of the above referred judgments of the Hon'ble Supreme Court, the petitioner cannot get any help from the Division Bench judgment delivered in the case of Shekhawat Explosives v. State of Rajasthan & anr. (RLW 2003(1) Raj. 648).

Next question yet remained to be answered is, whether it is necessary that above transaction of sale can be recognized as sale only if sale is legal?

The above was the question directly answered in the case of Commonwealth Vs. Miller, 118 Pa.Super. 58, 180 A. 144 wherein the issue involved was a tax on stored spiritous and vinous liquors and the tax was sought to be imposed upon illegally manufactured whiskey. In the said case, it has been held “[i] it would

seem unreasonable to assume, without a clear expression of such intension, that the Legislature intended that a tax should be imposed on those who complied with the mandate of the law but those who flagrantly flaunted the law should not be required to pay such a tax."

In the case of Hiram K. Undercofler, Commissioner Vs. Veterans of Foreign Wars Post 4625 139 South Eastern Reporter, 2nd Series 776 Ga. it has been held that "We find nothing in the Act which indicates any intention on the part of the legislature to differentiate between legal and illegal sales, and the general language of the Act should not be limited to legal sales only merely because the Act does not specifically tax illegal sales by referring to them as such."

In the Hiram K. Undercofler case (supra) even a issue was raised to tax the illegal sale is equivalent to licensing an illegal activity and that the court should not so construe the Act as to give such an intent to the legislature in the absence of clear express words to the contrary. Same can be argument here also in view of the fact that the explosives, which were

involved in the works contract were not salable commodity in open market and, therefore, the petitioner could not have sold it to anybody including to its own contractor. We may recapitulate here, if the sale is illegal, it may not pas on title to the vendee- the purchaser and the purchaser may not get full benefit of that purchased property and that is subject matter relating to the title to the property and consequential rights of the purchaser, which is governed by general law governing the subject of sale of property. As stated above, the sale is defined in the Rajasthan Sales Tax Act, 1994. Tax Act is for specific purpose and and do not depend upon other law for the purpose of levy of tax or for finding out the nature of transaction, if the taxing law itself has defined the transaction and included the transaction in any of the category of transaction for the purpose of levy of tax. The taxing law may not be a substantive law determining the property rights of the parties involved in the transaction and, therefore, the separate definition of sale has been given in the Act of 1994. Certain

transactions, which may fall short of sale in general law have been included in the transaction of sale statutorily in the Act of 1994 and that is why the transaction in question is deemed sale and may not be actual sale so as to pass on title in property to the vendee-the purchaser. The illegal transaction of sale may not pass on title of property to the vendee but still it is sale for the purpose of Act of 1994. An illegal sale may have penal consequence or other liability of vendee and or vendor and that may be statutory, but cannot convert the illegal transaction into legal transaction if law does not permit. In taxing statute, the statutes are required to be constructed strictly and at the same time, when language of the Act is clear and unambiguous then there is no reason to presume that the statutory provisions of law creating liability has been enacted to licensing the illegal activity (in this case sale of explosives) to make the illegal transaction legal. Therefore, the fact whether the petitioner could have sold the explosives to the contractor in view of the restrictions under the Explosives Act is totally irrelevant and

immaterial.

Same view was taken in the case of Y. Laxman v. Commercial Tax Officer, 1st Circle, Udipi and Anr. ((1975) 35 STC 393(Kar.), the Karnataka High Court held that " the expression "buying, selling, supplying or distributing goods" used in section 2(1)(k) of the Act does not exclude buying, selling, supplying or distributing goods in an illegal way. The liability to pay sales tax does not depend upon whether the business carried on by the dealer is lawful or not. Even when buying, selling, supplying or distributing goods is not authorised by law, a person who carries on those activities would be liable to pay sales tax under the Act."

In view of the above, it is held that even if transfer of property in goods was not permitted by statutory provision; i.e., the explosive Act even then it was a taxable transaction under the Act of 1994.

Another contention of the learned counsel for the petitioner is that since the explosives were consumable commodity in the hands of the petitioner and the said explosives have been

consumed in the works contract, therefore, the transaction cannot be a sale.

The learned counsel for the petitioner, tried to draw distinction between the goods which are transferred to contractor and which are used or involved in execution of works contract in two categories,one which are returned to the Principal by the contractor after completion of the works contract in its original form or in its different form and others which are consumed or exhausted in the works contract. According to the learned counsel for the petitioner, the goods which can be returned to the Principal by the contractor alone can be subjected to tax. And the goods which are consumed and exhausted in the execution of works contract and nothing remains with the contractor then the transfer of those consumable goods to the contractor, cannot be treated to be sale even under deeming clause of sale. The learned counsel for the petitioner for this purpose, relied upon the judgment of the Hon'ble Supreme Court deliverd in the case of Gannon Dunkerley & Co. and others v. State of Rajasthan & others (1993(88) Sales Tax Cases

204).

It appears that in the case of Gannon Dunkerley(supra), a different question also cropped up which was with respect to the determination of the value of the goods which are involved in execution of the works contract. The value of the goods involved in works contract were of two types; one where value of goods involved in works contract was known and another where its actual cost is not known. In former case there is no difficulty in levying the tax. In later case a formula for determining the value of goods involved in works contract was worked out after taking into consideration the suggestions of contractors and suggestion came from the State that 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 learned counsel for the contractors submitted that in that event, the cost incurred on the items suggested by the contractors may be deducted from the value of the entire contract in order

to arrive at value of the goods involved in the execution of the works contract. Hon'ble Supreme Court held as under:-

> "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.".

According to the learned counsel for the petitioner, since the explosives is a consumable item and in fact consumed in mining operation, therefore, as per clause (e), the entire cost of explosives is required to be deducted from the value of the goods involved in execution of works contract, which in other words, mean that no tax can be levied on the value of the consumable item which is explosive in this case. The argument appears to be quite attractive but is devoid of any force because of the reason that deduction from the value of goods involved in the execution of a works contract can be claimed only of "charges towards labour" and "services" obviously provided by principle. The explosive is not falling in either "labour

charges" nor it is "service" provided to the contractor. As per clause (e) referred above, the consumable items are only the items used ancillary in works contract and those can be water, electricity and fuel etc., as these items are not the goods transferred to the contractor in execution of works contract and providing above or like items, the contractor is given some facilities by the Principal engaged in works contract. In mining operation, the main article with which operation can be given effect to, is the explosive and that explosive can be put to blast with the help of electricity, which may be generated or obtained from different source. The explosive is the item like cement, iron etc,for which tax is leviable. In mining operation, fuel is consumed to run the machinery like in other works contract and the machineries are run by electricity and fuel and in that process, there may be consumption of water. Therefore, the explosives are not those consumable items which can be equated with the water, electricity or fuel. When in the definition clause or a list prescribing certain items, is not exhaustive and uses the words

“such as” and “etc.” then other items or articles or goods which are similar to the goods or articles, referred in the definition depending upon the facts, can be included in said definition.

The Hon'ble Supreme Court in the case of Gannon Dunkerley & Co. (supra) while considering the suggestion that the value of goods involved in the execution of the works contract is required to be determined by taking into account the value of entire works contract and deducting therefrom the charges towards labour and services held that item referred above in preceding para from (a) to (h) the account value of which may be deducted from entire works contract as charges towards labour and service and, thereafter, clearly observed that “the amount 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”. Here, in this case, the specific known commodity which has been transferred to the contractor is the explosives. Its value is known and, therefore, is not item transferred in the execution of

work, value of which is required to be determined by assessment only as is required to be determined in a case where Principal or contractor, as the case may be, does not maintain proper accounts or accounts maintained by him are not found worthy of credence. Therefore, the revenue was justified in levying the tax on the value of the goods, which deemed to have been transferred to the contractor in execution of the works contract.

In view of the above discussion, the answer of question no.1 is that the transaction referred in question no.1 is sale within the meaning of Rajasthan Sales Tax Act, 1994 under sub-clause (ii) of sub-section (38) of Section 2 of the Act of 1994.

Another contention of the petitioner covered by question no.(ii) and (iii) is that the petitioner could have purchased the goods on payment of concessional rate of tax as the goods were required as raw-material for mining operation of the petitioner and the explosive has been shown as raw-material in the certificate of registration of the petitioner and, thereby, the condition of sub-section (1)

of Section 10 fulfilled and otherwise explosives were used by the petitioner in the process of mining and if it is held that petitioner not entitled to take benefit under sub-section (1) of Section 10 then was entitled to benefit under sub-section (3) of Section 10 of the Act of 1994. The declaration form ST17 is a composite declaration form covers all the transactions and if the purchase falls in any of the category given in the form ST17 or under Rule 23 then consequence is only one that tax will be levied at concessional rate of tax and in this case @ 4% only. Therefore, even if the declaration given in ST17 form may be found wrong merely on the ground that the declaration is not falling in particular category and it is found that it falls in another category then that cannot be said to be a violation of declaration and it is a technical mistake only cannot have penal consequence of charging full rate of tax. For this purpose we may examine relevant provisions of law.

Section 10 of the Act of 1994 allows sale and purchase of certain goods on payment of concessional rates of tax. The petitioner's

contention is that he was entitled to purchase the explosives on payment of concessional rate of tax under Section 10 of the Act of 1994 in view of the fact that the explosives have been shown in the certificate of registration of the petitioner company as raw-material and, therefore, as per sub-section (1) of Section (10) of the Act of 1994, the petitioner was entitled to benefit of purchasing the explosive on payment of concessional rate of tax and he submitted a declaration form ST17 and paid the tax @ 4% and, thereafter, used the above explosives for its own purpose. In view of the above facts, the explosives were tax paid commodity in the hands of the petitioner.

According to learned counsel for the petitioner under any provision of Section 10, it has not been provided that the goods purchased after availing the benefit of payment of concessional rate of tax are required to be used in any particular manner. The requirement under sub-section (1) of Section 10 of the Act of 1994 are that dealer should be a registered dealer under the Act of 1994, the goods must be shown as raw-material in his certificate of

registration and as per sub-section (2) of Section 10 of the Act of 1994 goods are required to be used by the person himself, purchasing the goods on payment of concessional rate of tax. And in case, after purchasing the goods on payment of concessional rate of tax, the goods are not utilized by him for the purpose specified in sub-section (1) of Section 10 of the Act of 1994 then said person is liable to pay the difference of amount of tax, which would be the difference between full rate and the amount of tax paid under sub-section (1) with interest @ 2% per month.

Even as per sub-section (3) of Section 10 of the Act of 1994 the goods other than raw-material if are purchased by the dealer, which are required by him for use in the manufacturing or processing of goods for sale or in mining or in generation or distribution of electricity then said dealer can purchase the goods on payment of concessional rate of tax. In the present case, firstly the commodity has been shown as raw-material in the certificate of registration of the petitioner and secondly, even if it is treated not to be raw-material

then the explosives involved in the works contract were required by the petitioner for use in its own mining operation and for these facts there is no dispute then the petitioner was entitled to take benefit of purchase the goods on payment of concessional rate under Section 10 of the Act of 1994 and the petitioner paid the tax @ 4%, therefore, the explosives were tax paid commodity and even if it is held to be sale then it is sale of tax paid goods, therefore, the same cannot be subject to tax second time even if it was sold to the contractor (in law) because sale was within State and as per Section 4 tax is one time tax.

It is also submitted that the Rule 23 prescribes form ST17, which is the declaration given before purchasing of the goods of concessional rate by the dealer and it very specifically provides that a purchase may be for re-sale within the State as per sub-clause (i) in form ST17 in consonance with the of sub-clause (i) of sub-rule (1a) of Rule 23 of the Rajasthan Sales Tax Rules, 1995. In this form itself as per clause (iv) the dealer can give declaration about the goods purchased that above

goods will be used as processing articles under sub-section (3) of Section 3 of Section 10 of the Act of 1994 The petitioner's declaration in form ST17 was submitted under sub-clause (iv) of sub-rule (1a) of Rule 23 of the Rules of 1995 and it is found that it has been falling in other clause of Rule 23 then it cannot be said that the petitioner-dealer has violated any of the conditions of form ST17 merely because of describing its purchased goods in different category which has no other consequence then the consequence which is if the goods are purchased in the category declared by the petitioner.

The arguments advanced by learned counsel for the petitioner are devoid of force in view of the fact that once it has been held that the transfer of property to the contractor is sale under sub-clause (ii) of sub-section (38) of Section 2 of the Act of 1994 then that took place before the goods could have been utilized by the petitioner under sub-section (1) or under sub-section (3) of Section 10 of the Act of 1994 and, therefore, it cannot be held that the goods were used by the petitioner itself as raw-material or has been used for petitioner's own

purpose by the petitioner itself. In view of the above, the Board of Revenue rightly held that the event of sale took place prior to its use in the mining operation of the petitioner and, therefore, the petitioner is guilty of giving wrong declaration under ST17. The consequence of it is under sub-section (2) of Section 10 of the Act of 1994 and petitioner has been charged at only the difference amount of tax and rightly held so.

The next contention of the petitioner is that petitioner is not liable to pay interest because of the reason that as per sub-section (1) of Section 58 the interest can be levied for the period starting from the day immediately succeeding the date specified for such payment and ending with the day on which payment is made and according to learned counsel for the petitioner till the revenue determined the petitioner's liability of payment of tax by order, he could not have paid the tax amount.

It is undisputed that it is the duty of the dealer to pay the tax and it is not dependent upon any order, which may be passed under the Act of 1994. Section 58 of the Act of 1994

clearly provides that in case dealer commits default in making payment of any amount of tax (i) leviable or (ii) payable or (iii) of any amount of tax, fees interest or (iv) penalty assessed or (v) determined or (vi) of any amount or (vii) demand otherwise payable, within the specified time under the provisions of the Act of 1994 or rules made or notification issued thereunder then dealer is liable to pay interest for the period starting from the day immediately succeeding the date specified for such payment. Therefore, interest can be charged on the amount when payment of tax is required by law itself by particular time and in that situation, the payment is not dependent upon passing of any order by the assessing authority. In this case, the petitioner paid the tax @ 4% admittedly and he was not entitled to pay the less amount of tax and, therefore, the interest has rightly been levied against the petitioner.

In view of the above reasons, the revision petitions are dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-