IN THE HIGH COURT OF MEGHALAYA AT SHILLONG

: ORDER :

WP (C) No.369 of 2014

M/s GR Infra Projects Ltd. ….. Petitioner

-Versus-

State of Meghalaya and ors ….. Respondents

Date of Order **::** 29th June, 2017

PRESENT
HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE
HON'BLE SHRI JUSTICE VED PRAKASH VAISH

Shri P Ghiya, for the petitioner
Dr BP Todi, Advocate General, with Shri A Todi and Ms. P Agarwal, GA for the respondents

AFR **BY THE COURT: (per Hon'ble the Chief Justice)**

By way of this writ petition, the petitioner company, a registered dealer under the Meghalaya Value Added Tax Act, 2003 ['the Act of 2003'], has assailed Entry No. 1 in Schedule IV appended to the Act of 2003 providing for the rate of Value Added Tax ['VAT'] on the item described as "Work Contract", as being ultra vires the Constitution of India; and has also assailed the order dated 23.09.2014, as passed by the Commissioner of Taxes, Meghalaya rejecting the revision petition against the order dated 16.06.2014, whereby the Appellate Authority

had affirmed the rectified assessment order dated 16.09.2013 for the periods ending 30.06.2011 to 31.12.2012.

The factual aspects of the matter are not much in dispute and only a brief reference thereof would suffice. The petitioner company, engaged in the business of Infrastructure Projects and Construction of Roads etc. and registered under the Act of 2003 under Registration No. 17130227064, was awarded the contract for construction of Shillong By-Pass connecting NH 44 in the State of Meghalaya. The case of the petitioner company is that it had filed the returns in terms of the provisions of the Act of 2003 for the relevant periods after following the provisions of the Meghalaya Value Added Tax Rules, 2005 ['the Rules of 2005'] and after claiming admissible deductions, had paid VATon the taxable turn-over at the rate specified; and the department issued the certificate of non-deduction of tax at source.

The grievance of the petitioner is that despite having verified and accepted the returns filed, the authority concerned issued a notice dated 17.05.2013 on the allegations that the petitioner company was a 'works contractor' and in the assessment proceedings, the material like bitumen, sand etc., were assessed at 5% of tax whereas the tax was required to be charged @ 13.5%. The petitioner would submit that the Assessing Authority, without application of mind to the matter and without considering its explanation, proceeded on the so-called audit objections and issued second notice dated 03.07.2013. It is submitted that the petitioner filed a detailed reply to the second notice while taking objections against the propositions of the Assessing Authority but the said authority proceeded to pass the impugned order dated

16.09.2013, being that of rectified assessment, levying tax at 13.5% on the goods in question. The petitioner would submit further that the appeal and the revision petition preferred before the competent authorities were dismissed by the impugned orders dated 16.06.2014 and 23.09.2014 respectively, without examining its contentions.

While assailing the orders aforesaid, the petitioner has also assailed the validity of Entry No. 1 of Schedule IV to the Act of 2003 and has also asserted in the alternative that the definition of 'works contract' in the Act of 2003 does not take in its fold the work of road construction and as such, the said Entry No. 1 of Schedule IV cannot be applied to its contract related with the construction of road.

Learned counsel for the petitioner has essentially put forward two alternative submissions in support of this writ petition. In the first place, learned counsel has emphasized on the contentions that Entry 1 of Schedule IV to the Act of 2003 is ultra vires and beyond the legislative competence of the State where it provides for levy of tax on 'works contract'. Learned counsel would refer to Clause (29A)(b) of Article 366 to the Constitution of India, Entry 92-A of List II and Entry 54 of List II in Seventh Schedule to the Constitution of India; and would also refer to the definitions of 'dealer', 'goods', 'sale' and 'works contract', as occurring in the Act of 2003. With further reliance on the decision of Hon'ble Supreme Court in ***Gannon Dunkerly & Co v. State of Rajasthan (1993) 88 STC 204***, learned counsel would argue that the tax is levied only on the turn-over of sale of goods; and even in the works contract, the tax could only be levied on the goods involved in the execution of contract and not on the 'works contract' itself.

However, according to the learned counsel, Entry No. 1 of Schedule IV to the Act of 2003 directly provides for levy of tax on the 'works contract' itself and not on the goods; and such a proposition directly offends the relevant provisions and entries in the Constitution of India as also the principles expounded by the Hon'ble Supreme Court. Apart from the decision in ***Gannon Dunkerly*** (supra), learned counsel has also referred to the decisions of the Hon'ble Supreme Court in ***Bharat Sanchar Nigam Ltd. v. Union of India (2006) 145 STC 91***; ***State of Rajasthan v. Rajasthan Chemist Association (2006) 147 STC 542;*** and ***Builders Association of India v. Union of India (1989) 73 STC 370***. Learned counsel would submit that the Entry 'works contract' as occurring in Schedule IV to the Act of 2003 only refers to transaction and not to goods; and the attempt on the part of the State to levy tax on the transaction remains entirely unauthorised.

In the second limb of submissions, made in the alternative to the aforesaid, learned counsel has particularly referred to the definition of 'works contract' occurring in Clause 2 (xlv) of the Act of 2003 and has submitted that the work of 'road construction' as carried out by the petitioner is not covered under the said definition and, therefore, even if the questioned Entry of Schedule IV is not interfered with, the agreement and the activity of the petitioner (i.e. of road construction) are not covered thereunder.

Per contra, the learned Advocate General appearing for the respondents has argued that the petitioner is a dealer duly registered under the Act of 2003 and is liable to tax whenever transfer of property in goods takes place in execution of any 'works contract'. The learned

Advocate General has relied upon Section 5 of the Act of 2003 and submitted that only the transfer of property in goods is taxable thereunder; and this is the taxing event referred to in Entry 1 of Schedule IV to the Act of 2003. Learned Advocate General would further submit that though the meaning of said Entry 1 of Schedule IV is clear but in case of any ambiguity, the substantive provisions contained in Section 5 of the Act of 2003 would prevail, where the taxing event is clearly specified. According to the learned Advocate General, it is incorrect to contend that the 'works contract' as such is sought to be taxed. Learned Advocate General has also referred to the Rules of 2005, particularly Rule 12 thereof, to submit that while providing the method of charging the tax in the matters of 'works contract', all the deductibles as laid down by the Hon'ble Supreme Court in *Gannon Dunkerly* (supra) are provided for. Thus, according to learned Advocate General, the scheme of the Act of 2003 and the Rules of 2005 makes it clear that the tax is being charged only on the transfer of property in goods in the 'works contract' and such charging of tax remains precisely within the competence of the State Legislature.

As regards the second limb of arguments, learned Advocate General would submit that the petitioner, who is a registered dealer under the Act of 2003 is not entitled to allege anything contrary to its dealership liabilities; and is not entitled to allege that his activity of road construction is not that of a 'works contract' within the meaning of the Act of 2003.

Having given thoughtful consideration to the rival submissions and having examined the record, we are clearly of the view that this writ petition carries no substance and deserves to be dismissed.

Appropriate it would be to take note of the relevant provisions of law as also the basic principles in decisions referred. It remains more or less indisputable that in the scheme of the Act of 2003, while the incidence of tax is specified in Section 3, the charging provisions in Section 5 thereof read as under:

> *"**5. Levy of Value Added Tax on goods specified in the Schedules appended to this Act** – (1) Subject to the provision of this Act, and Rules, there shall be levied a tax on the turnover of sales of goods specified in Schedule II, III and IV appended to this Act at every point of sale of such goods within the State at the rate specified therein.*
>
> *(2) Taxable turnover of sales in relation to a dealer liable to pay tax on sale of goods under sub-section (1) of section 3 shall be part of the gross turnover of sales during any period which remains after deducting therefrom;*
>
> *(a) sales of goods declared as exempted under Section 8(i)(a);*
>
> *(b) sales of goods which are shown to the satisfaction of the Commissioner to have taken place –*
>
> *(i) in the course of inter-State trade or commerce; or*
>
> *(ii) outside Meghalaya; or*
>
> *(iii) in the course of the import of the goods into or export of the goods out of the territory of India;*
>
> *Explanation - Section 3, 4 and 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in sub-clause (i), sub-clause (ii) or sub-clause (iii);*
>
> *(c) in case of turnover of sales in relation to works contract, the charges towards labour, services and other like charges and subject to such conditions as may be prescribed:*
>
> *Provided that in the cases where the amount of charges towards labour, services and other like charges in such contract are not ascertainable from the terms and conditions of the*

contract, the amount of such charges shall be calculated on the basis of such percentages of the value of works contract as specified in Schedule IV A appended to this Act;

(*d) such other sales on such conditions and restrictions as may be prescribed.*" *(underlining supplied)*

Schedule IV appended to the Act of 2003, carrying the questioned Entry at Sl. No.1, in its original form had been as under:

*"**Schedule – IV***

Sl. No.	*Description*	*Rate of tax (paise in the rupee)*
1.	*Works contract*	*12.5*
2.	*Lease transactions*	*12.5*
3.	*All other goods not covered by First, Second, Third and Fourth Schedule.*	*12.5"*

It is not in dispute that by the later amendment, the rate of tax in Schedule IV was enhanced to 13.5%.

The relevant part of the definitions of the expressions 'dealer' 'goods', 'sale' and 'works contract', as occurring in Clauses 2 (xvi), (xvii), (xxxii), and (xlv) respectively in Section 2 of the Act of 2003 could be taken note of as under:

*"**2 (xvi)** "Dealer" means any person who carries on (whether regularly or otherwise) for cash or for commission or for remuneration or for deferred payment or for other valuable consideration, within the State of Meghalaya, the business of –*

(a) transferring property in goods otherwise than in pursuance of any contract; or

(b) transferring property in goods (whether as goods or in some other form) involved in the execution of any works contract; or

(c) delivering goods on hire-purchase or any system of payment in installment; or

(d) transferring the right to use goods for any purpose (whether or not for specified period); or supplying by way of or as part any service or

in any manner of goods being food or any other article for human consumption or any drink (whether or not intoxicating); or ……..."

***"2 (xvii)** "Goods" means all kinds of movable property other than newspapers, actionable claims, stock shares, or securities and includes livestock, all materials, articles, commodities involved in the execution of any works contract, lease or hire purchase or those to be used in fitting out, improvement or repair of moveable property."*

***"2 (xxxii)** "Sale" with all its grammatical variations and cognate expression means every transfer of the property in goods, other than by way of mortgage, hypothecation, charge or pledge, by one person to another in the course of trade or business for cash, deferred payment or other valuable consideration and includes:-*

(a) transfer, otherwise than in pursuance of a contract, of property in goods for cash, deferred payment or other valuable consideration;

(b) transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract;

(c) delivery of goods on hire purchase or any other system of payment by installments;

(d) a transfer of the right to use any goods for any purpose, whether or not for specified period, for cash, deferred payment or any other valuable consideration; ……."

***"2 (xlv)** "Works Contract" means and includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property."*

Entry 54 of the State List (List-II) of the Seventh Schedule to the Constitution of India reads as under:-

"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."

On the other hand, Entry 92-A of the Union List (List-I) of the Seventh Schedule is as under:-

"92A Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

The power to impose tax on the transfer of property in goods involved in execution of works contract came to be provided to the State Legislature as a result of the amendments introduced to the Constitution of India by the Constitution (Forty-sixth Amendment) Act, 1982, the validity whereof was upheld by the Hon'ble Supreme Court in the case of *Builders Association of India* (supra). By the Forty-sixth Amendment, Clause (29A) was introduced to Article 366 of the Constitution of India and Clause (b) thereof, relevant for the present purpose, could be noticed as under:

> *"(29A) 'Tax on sale or purchase of goods' includes –*
> ……..
> *(b) A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract."*

In the case of *Builder Association of India* (Supra), the Hon'ble Supreme Court explained the scope of effect of the introduction of new definition of 'tax on sale or purchase of goods' by the said Clause (29A) of Article 366; and while emphasizing that even after introduction of the said Clause (29A), the States were not extended the power to levy tax on sales and purchase independent of Entry 54 of the said List, the Hon'ble Supreme Court, inter alia, observed as under:

> *"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 Sales 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 the case of Bengal Immunity Co. Ltd. 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.

We, therefore, declare that sales tax laws passed by the Legislatures of States levying 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."

Various facets of charge of tax in the 'works contract' came up for fuller exposition in the case of *Gannon Dunkerly* (supra) wherein, the Hon'ble Supreme Court summed up its conclusions, inter alia, as follows:-

"51. The aforesaid discussion leads to the following conclusions:-

(1) In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366(29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.

(2) The provisions of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366 (29-A)(b).

(3) While defining the expression 'sale' in the sales tax legislation it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer failing within the ambit of

> *Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression 'sale' in a way as to bring within the ambit of the taxing power a sale in the course of inter-State trade or commerce, or a sale outside the State or a sale in the course of import and export.*
>
> *(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute the measure for imposition of the tax.*
>
> *(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in article 366 (29-A) (b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.*
>
> *(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract; (iv) charges for planning, designing and architect's fees; and (v) cost of consumables used in execution of the works contract; (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services. ….."* *(underlining supplied)*

In *Bharat Sanchar Nigam Ltd.* (supra), the aforesaid clause (29A) of Article 366 came for further exposition where the Hon'ble Supreme Court, while tracing the origin and history of the said Clause (29A), pointed out, inter alia, that under the said Clause (29A), even when separate categories of 'deemed' sales were brought within the meaning of 'sale' for the purpose of tax yet, the meaning of the expression 'goods' was not altered and that there had to be the essential components of agreement, consideration and actual transfer of title to constitute the transaction of sale. Having said so, the Hon'ble

Supreme Court explained the meaning and scope of Clause (29A) of Article 366 in the following:-

> *"42. All the clauses of article 366(29-A) serve to bring transactions where one or more of the essential ingredients of a sale as defined in the Sale of Goods Act, 1930 are absent, within the ambit of purchase and sales for the purposes of levy of sales tax. To this extent only is the principle enunciated in Gannon Dunkerly limited. The amendment especially allows specific composite contracts viz., works contracts [sub-clause (b)]; hire-purchase contracts [sub-clause (c)], catering contracts [sub-clause (f)] by legal fiction to be divisible contracts where the sale element could be isolated and be subjected to sales tax.*
>
> *43. Gannon Dunkerley survived the 46th Constitutional Amendment in two respects. First with regard to the definition of "sale" for the purposes of the Constitution in general and for the purposes of Entry 54 of List II in particular except to the extent that the clauses in Article 366 (29-A) operate. By introducing separate categories of "deemed sales", the meaning of the word "goods" was not altered. Thus, the definitions of the composite elements of a sale such as intention of the parties, goods, delivery, etc. would continue to be defined according to known legal connotations. This does not mean that the content of the concepts remain static. Courts must move with the times. But the 46th Amendment does not give a licence, for example, to assume that a transaction is a sale and then to look around for what could be the goods. The word "goods" has not been altered by the 46th Amendment. That ingredient of a sale continues to have the same definition. The second respect in which Gannon Dunkerley has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by Article 366 (29-A). Transactions which are mutant sales are limited to the clauses of Article 366 (29-A). All other transactions would have to qualify as sales within the meaning of the Sales of Goods Act, 1930 for the purpose of levy of sales tax."* *(underlining supplied)*

In the case of *Rajasthan Chemist Association* (supra), the Hon'ble Supreme Court, pointed out that when the question is of tax on sale of goods, the measure of tax for the purpose of quantification must retain its nexus with the event of sale. The Hon'ble Supreme Court, inter alia, observed as under:-

> *"The question of tax on sale of goods may be examined in the said back-ground. The subject of tax being sale, measure of tax for the purpose of quantification must retain nexus with "sale" which is subject of tax. As noticed above, tax on sale of goods, is tax on vendor in respect of his sales and is substantially a tax on sale price. The*

vendor or buyer cannot be taxed de hors the subject of tax that is sale by the vendor or purchase by the buyer. The four essential ingredients of any transaction of sale of goods include the price of the goods sold, therefore, in any taxing event of sale, which become the subject-matter of tax price component of such sale, is an essential part of the taxing event. Therefore, the question does arise whether a particular taxing event of sale could be subjected to tax at the prescribed rate to be measured with such price which is not the component of the transaction of sale, which has attracted the sales tax."

Having taken note of the relevant statutory provisions and the principles enunciated by the Hon'ble Supreme Court, we may take up for determination the questions arising in this matter.

Question No.1:

As to whether Entry 1 of Schedule IV to the Act of 2003 is beyond the legislative competence of the State and is ultra vires?

The submissions on behalf of the petitioner in challenge to the aforesaid Entry 1 of Schedule IV to the Act of 2003 is that thereby and thereunder, the State Legislature has attempted to levy tax on the 'works contracts' itself, though the State Legislature has no competence to tax any transaction or a contract. The question is as to whether the said entry seeks to levy tax on transaction or a contract? In our view, the plain and clear answer to this question is in the negative and the contentions on behalf of the petitioner deserve to be rejected.

It cannot be a matter of any doubt or debate that on the principles enunciated and explained by the Hon'ble Supreme Court on the purport, effect and scope of Clause (29A) of Article 366 to the Constitution of India that: (a) the subject of tax being sale of goods, the transaction ought to be that of sale of goods carrying all the necessary ingredients thereof; (b) introduction of Clause (29A) to Article 366 does

not confer any additional right in the State Legislature to levy sale tax beyond Seventh Schedule to the Constitution; (c) the power of the State Legislature to levy taxes on sale and purchase of goods, including deemed sale and deemed purchase, could only be found in Entry 54 of State List in Seventh Schedule and not beyond; (d) Clause (29A) of Article 366 cannot be operated in the manner that the transaction would be assumed to be a sale and then, to find as to what are the goods in it; (e) the tax on transfer of property in goods involved in execution of a works contract is leviable only on the goods involved in execution of such works contract; and (f) for the purpose of determination of such leviable goods which are involved in execution of a works contract, for the purpose of levy of tax referable to Article 366 (29A)(b), the value of works contract could be taken as the basis and value of goods involved in execution of works contract could be arrived at by deducting the expenses incurred by the contractor for providing labour and other services from such value of works contract.

In the scheme of the Act of 2003, we find that the tax is levied on the turnover of sale of such goods as are specified in Schedules II, III and IV appended to this Act. A look at the Schedules II and III makes it clear that thereunder, different nature goods have been described and the rate of tax on sale thereof has also been specified. While Schedule II describes the goods in general, Schedule III refers to a specific nature of goods, which are related with precious metals like gold and silver, stone and diamonds etc. In that continuity occurs Schedule IV where three specified entries are found, which are of ‘works contracts’, ‘lease transactions’ and ‘all other goods not covered by the other

Schedules'. True it is that Entry No.1 of Schedule IV mentions only 'works contract' but this entry cannot be read in isolation and *de hors* it object and purpose. This entry is required to be read in and along with Section 5 that provides for levy of tax on the goods specified in the Schedules appended to the Act. This charging section specifically provides for levy of tax only on turnover of the sale of goods specified in the Schedules.

Reading the said entry along with the substantive provisions of Section 5, evident it is that the intention has only been to charge the tax on sale of goods involved in the works contract and not on 'works contract' itself. The aforesaid intention of the legislature is further clear from Clause (c) of Sub-section (2) of Section 5. The said Sub-section (2) provides for certain deductions for the purpose of finding the taxable turnover and Clause (c) thereof specifically provides that in case of turnover of sale in relation to works contract, the charges towards labour, services and other like charges are to be deducted. It has also been rightly pointed out that the Rules of 2005 promulgated for the purpose of carrying out the processes and proceedings under the Act of 2003 make it further clear that the taxable turnover for the purpose of a works contract is essentially arrived at with reference to the event of transfer of property in goods in such a works contract after providing for the admissible deductions. We may incidentally observe that various facets of the deduction at source as occurring in Section 106 of the Act of 2003 for the purpose of works contract have been dealt with in detailed by the Gauhati High Court in the case of ***MES Builders Association: 2010 (2) GLT 310*** and the said decision was

further explained and applied by this Court in the case of ***NG. Megachandra Singh v. Union of India: WP (C) No.126 of 2013*** decided on 02.08.2016. Suffice it to observe for the present purpose that in the said decisions too, it had never been the matter of doubt that in works contract, the tax is charged only on transfer of property in goods.

In the ultimate analysis, we are clearly of the view that even if that expressions like “transfer of property in goods involved in a works contract”, are not specified as such in Entry 1 of Schedule IV to the Act of 2003, these words and expressions are inherent and intrinsic to the said entry in view of its purpose i.e., providing for levy of tax under the Act of 2003 per Section 5 thereof. The scheme of the Act of 2003 read as a whole leaves nothing to doubt that the provisions therein, in relation to the levy of tax as regards works contract, are squarely in conformity with the principles enunciated by the Hon’ble Supreme Court in the decisions aforesaid. Thus, the contentions urged on behalf of the petitioner against the validity of Entry 1 of Schedule IV to the Act of 2003 stand rejected.

Question No.2:

As to whether the activity of road construction is not covered under the definition of works contract in the Act of 2003?

The second contention of the learned counsel for the petitioner that the activity undertaken by the petitioner (i.e., of road construction) is not covered under the definition of “Works Contract” as contained in Section 2(xlv) of the Act of 2003 remains equally without substance. Though the expressions “means and includes” occurring in the

definition of ‘works contracts’ in Section 2 (xlv) of the Act of 2003 may, prima facie give, an impression that it is an exhaustive definition but we find that the activities referred therein are of wide import and would cover every such act or activity which could be considered included therein. Though learned counsel for the petitioner has argued that making of road is understood always to be a work of construction and we find that the expression ‘construction’ has been used in the said definition only with reference to ‘building’ but then, the activities of ‘laying’, ‘improvement’, ‘repair’ or ‘commissioning’ of any moveable or immovable property are also covered in this definition. Though ordinarily making of a road is known to be an activity of construction, we see no reason as to why, for the purpose of the said definition of ‘works contract’, this activity would not be covered in the broad connotation of the expression ‘laying’, particularly when ‘laying’ is understood to be an activity of putting something in a particular position or surface, often horizontally and in an orderly manner. On a purposive interpretation, we are clearly of the view that a works contract concerning road or highway is covered under the broad definition of ‘works contract’ in the Act of 2003. The contention in this regard by the learned counsel for the petitioner also stands rejected.

For what has been discussed hereinabove, the challenge to Entry 1 in Schedule IV to the Meghalaya Value Added Tax Act, 2003 fails; and we find no infirmity in the rectified assessment order dated 16.09.2013 and subsequent orders by the appellate and revisional authorities.

In view of the above, the writ petition fails and is, therefore, dismissed. No costs.

JUDGE **CHIEF JUSTICE**

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