REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5390 OF 2007

M/s Larsen & Toubro Ltd. .... Appellant(s)

Versus

State of Jharkhand and Ors. .... Respondent(s)

J U D G M E N T

R.K. Agrawal, J.

1) The present appeal has been filed against the final judgment and order dated 17.11.2006 passed by the Division Bench of the High Court of Jharkhand at Ranchi in W.P. (T) No. 2630 of 2006 whereby the High Court dismissed the petition filed by M/s Larsen & Toubro Ltd.-the appellant –Company while upholding the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur.

2) **Brief facts:**

(a) The appellant-Company, having its registered office at Mumbai, is a public limited company and is involved in manufacturing, trading, leasing and construction business throughout the country. At the relevant time, the appellant-Company was involved in the execution of civil work contracts for its client, viz., Tata Iron & Steel Company Ltd. (TISCO) and had been filing its returns under the Bihar Finance Act, 1981 (hereinafter referred to as 'the State Act') and also under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act') in the Commercial Taxes Department, Urban Circle, Jamshedpur.

(b) For the Assessment Year (AY) 1991-92, the appellant-Company filed returns under the State Act. However, the assessment proceedings in relation to the above period, i.e., AY 1991-92 was completed in the year 1996 and an assessment order dated 24.01.1996 was passed by the assessing authority.

(c) After the assessment proceedings, an audit team of the Auditor General, Bihar, audited the assessment order dated 24.01.1996 and found that the dealer was allowed exemption of Rs. 3,12,47,916/-, being the amount of goods consumed by the appellant-Company during the course of execution of works contract. The appellant-Company claimed that such goods were purchased on payment of tax but no declaration in Form IX-C along with other evidence was submitted whereas the production or declaration of Form IX-C was mandatory, hence, the claim was not allowable and the said fact was conveyed to the assessing authority.

(d) On 28.09.2000, the office of Commissioner of Commercial Tax, Urban Circle, Jamshedpur, served a show cause notice to the appellant-Company to state as to why tax should not be levied on it for the amount of Rs. 3,12,47,916/- which was wrongly exempted from being taxed under the provision of the State Act.

(e) After affording an opportunity of hearing to the appellant-Company, a re-assessment order dated 27.02.2006 was passed by the Deputy Commissioner, Commercial Taxes,

Urban Circle, Jamshedpur whereby an additional demand of Rs. 35,72,475/- was created against the appellant-Company.

f) Being aggrieved by the re-assessment order dated 27.02.2006, the appellant-Company preferred a writ petition being W.P. (T) No. 2630 of 2006 before the High Court. A Division Bench of the High Court, vide order dated 17.11.2006, dismissed the petition filed by the appellant –Company while upholding the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur.

(g) Aggrieved by the order dated 17.11.2006, the appellant-Company has preferred this appeal by way of special leave.

3) Heard the arguments advanced by Mr. Pravin H. Parekh, learned senior counsel for the appellant-Company and Mr. Amarendra Saran and Mr. Ajit Kumar Sinha, learned senior counsel for the respondent-State and perused the records.

Point for consideration:

4) The only point for consideration before this Court is whether on the information given by the audit team of the

Auditor General, Bihar, the Assessing Authority was satisfied that reasonable ground exists to believe that a part of the turnover of the appellant-Company has escaped assessment within the meaning of Section 19 of the State Act based on which the assessing officer can re-open the assessment?

Rival contentions:

5) Learned senior counsel for the appellant-Company contended that an 'audit objection' cannot be construed as 'information' within the meaning of Section 19 of the State Act, based on which the assessing officer can change his opinion and re-open the assessment. The 'audit objection' relates to tax levied on turnover relating to 'consumables' wherein there is no sale/deemed sale involved. Consumables by its very nature are goods used for own consumption. The assessment order dated 24.01.1996 rightly records the said fact.

6) Learned senior counsel further contended that the original assessment order specifically considered whether purchase tax is to be paid under the State Act on the disputed items and the same was decided in negative and hence taxing the items later on is a mere change of opinion by the Assessing

Authority on the very same set of facts that were available on the date of passing the assessment order dated 24.01.1996.

7) Learned senior counsel further contended that non-filing of Form IX-C under Section 11 of the State Act read with Rule 12 of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as 'the Rules') does not attract the levy in the facts of the present case as the goods are used for 'own consumption' and there is no sale or 'deemed sale' of the said goods involving a transfer of property in the said goods to anybody.

8) It was further contended that Section 19 of the State Act read with Rule 20 and Form XIV of the Rules specifically requires the satisfaction of the Prescribed Authority regarding requirement of re-assessment before the issuance of the notice in this regard. The initiation of the re-assessment proceedings and the subsequent re-assessment order dated 27.02.2006 are illegal as there was no satisfaction on the part of the Prescribed Authority about existence of reasonable grounds to believe that turnover has escaped assessment. Hence, the same are liable to be set aside.

9) Learned senior counsel further contended that it is relevant to note the circumstances under which the appellant-Company was unable to produce the relevant records. The assessment year (AY) in question is 1991-92. The assessment order in relation to the same was passed on 24.01.1996. The show cause notice proposing to re-open the assessment was served on the appellant-Company on 28.09.2000 which was replied in detail by the appellant-Company vide letter dated 13.11.2000. Thereafter, for a period of five years, there was no communication from the side of the respondents and the appellant-Company, under the *bonafide* belief that the letter dated 13.11.2000 had satisfied the requirements of show cause notice, forwarded all the records to their dumping yards at Chennai. Learned senior counsel contended that owing to the above circumstances the failure of the appellant-Company to produce the aforesaid records was not at all willful.

10) Learned senior counsel finally contended that the order of re-assessment dated 27.02.2006 is illegal and the assessment proceedings cannot be re-opened on the basis of

audit objection, as the same does not amount to 'information' as contemplated under Section 19 of the State Act. The impugned order amounts to change of opinion on the same set of facts and law which were available even at the time of passing the order of assessment.

11) In support of the above contentions, learned senior counsel has relied upon the following decisions, viz., ***M/s Indian & Eastern Newspaper Society, New Delhi*** vs. ***Commissioner of Income Tax, New Delhi*** (1979) 4 SCC 248, ***Bhimraj Madanlal*** vs. ***State of Bihar and Another*** (1984) 56 STC 273, ***Usha Sales (Pvt.) Ltd.*** vs. ***The State of Bihar*** (1985) 58 STC 217 and ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam*** vs. ***M/s Thomas Stephen & Co. Ltd. Quilon*** (1988) 2 SCC 264.

12) *Per contra*, learned senior counsel for the respondent-State submitted that the assessing authority has not revised the assessment on the basis of the audit report only rather it had satisfied itself before revising and the same can be seen from the fact that it had rejected part of the audit

opinion and applied its mind before passing the order impugned.

13) Learned senior counsel for the respondent-State further submitted that the 'audit objection' in the present case is an 'information' within the meaning of Section 19 of the State Act and the competent authority has rightly re-assessed the turnover and demanded legally payable valid tax which was escaped. He further submitted that the word 'information' used in the Section is of the widest amplitude and comprehends variety of factors including information from external sources of any kind including discovery of new facts or information available in the record of assessment not previously noticed or investigated.

14) Learned senior counsel for the respondent-State submitted that if there is obvious mistake apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment. He finally submitted that there is no illegality in the re-assessment order dated 27.02.2006 as well as in the order

dated 17.11.2006 passed by the High Court and the claim of the appellant-Company is liable to be rejected.

15) In support of his submissions, learned senior counsel has relied upon the following decisions, viz., ***Commissioner of Income Tax*** vs. ***P.V.S. Beedies Pvt. Ltd.*** (1998) 9 SCC 272, ***Anandji Haridas and Co. (P) Ltd.*** vs. ***S.P. Kasture and Others*** AIR 1968 SC 565, ***Commissioner of Customs, Mumbai*** vs. ***Virgo Steels, Bombay and Another*** (2002) 4 SCC 316, ***Supreme Paper Mills Limited*** vs. ***Assistant Commissioner, Commercial Taxes, Calcutta and Others*** (2010) 11 SCC 593 and ***Chatturam & Ors.*** vs. ***CIT, Bihar*** AIR 1947 FC 32.

Discussion:

16) In the instant case, an audit team of the Auditor General, audited assessment order dated 24.01.1996 and found that the dealer was allowed an exemption of Rs. 3,12,47,916/- being the amount for goods consumed by the appellant-Company during the course of execution of works contract. It is the claim of the appellant-Company that those goods were purchased on payment of tax but no declaration in

Form IX-C along with other evidence was submitted. The same fact was brought to the notice of the assessing authority which in furtherance thereof issued a show cause notice to the appellant-Company. The production of Form IX-C was held to be mandatory and the claim of the appellant-Company was disallowed and an order of re-assessment dated 27.02.2006 was passed by the competent authority for an additional amount of tax of Rs. 35,72,475/- after following the due procedure of law.

17) The point arises for consideration is as to whether an 'audit objection' can be construed as 'information' within the meaning of Section 19 of the State Act based on which the assessing officer was satisfied that reasonable grounds exist to believe that any part of the turnover of the appellant-Company had escaped assessment under Section 19 of the State Act.

18) Learned senior counsel for the appellant-Company argued that it is mere a change of opinion which resulted in re-assessment order and is not information as contemplated under Section 19 of the State Act. Learned senior counsel for the respondent-State submitted that 'audit objection' in the

present case is definitely 'information' within the meaning of Section 19 and the High Court has rightly uphold the re-assessment order dated 27.02.2006.

19) In view of the above, it is relevant to quote Section 19 of the Bihar Finance Act, 1981 which is as under:-

> "19. **Turnover of registered dealer escaping assessment –** (1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer or a dealer to whom grant of registration certificate has been refused under the third proviso to sub-section (2) of Section 14, in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under sub-section (5) of Section 17 has been under-assessed or assed at a rate lower than that which was correctly applicable or any deductions therefrom has been wrongly made, the prescribed authority may, subject to such rules may, be made by the State Government under this part, and –
>
> (a) Within eight years from the date of the order of the assessment or reassessment where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the reason amount,
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> (b) Within eight years' from the date of the order of the assessment or reassessment in any other case.
>
> Serve on the dealer a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 17 and proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover, and the provisions of this part shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under sub-section (2) of Section 17:
>
> Provided that the amount of tax shall be assessed or re-assessed after allowing such deductions as were permissible during the said period and at rates at which it

would have been assessed had the turnover not escaped assessment or full assessment, as the case may be.

Explanation: - Production before the prescribed authority of accounts, registers or documents from which material facts could, with due diligence, have been discovered by the said authority, will not necessarily amount to full disclosure within the meaning of this section.

(2) (a) The prescribed authority shall, in a case falling under clause (a) of sub-section (1), direct that the dealer shall pay by way of penalty a sum not exceeding three times but not less than an amount equivalent to the amount of tax which is or may be assessed on the escaped turnover.

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

(c) For determining the amount of penalty under clause (a), where the penalty precedes assessment under clause (b) the prescribed authority shall quantify the amount of suppression and tax thereon provisionally in the prescribed manner.

(d) No order shall be passed under this sub-section without giving the dealer an opportunity of being heard in the prescribed manner.

3) Any assessment or reassessment made and any penalty imposed under this section shall be without prejudice to any action which is or may be taken under section 49."

Sub-Section (1) of Section 19 very clearly prescribes that the competent authority, upon information, if satisfied that reasonable ground exists to believe that any turnover of a registered dealer or a dealer to whom grant of registration certificate has been refused in respect of any period has, for any reason, escaped assessment or any turnover of any such

dealer assessed under sub-Section (5) of Section 17 has been under-assessed or assessed at a rate lower than that which was correctly applicable, may, within eight years from the date of order of assessment, proceed to assess or reassess the amount of tax in respect of such turnover.

20) For ready reference, the relevant portion of the assessment order dated 24.01.1996 is also extracted hereunder:-

"The Company has used the following work under its Tender work on its level and if we separate the both, then it is like this.

Camp equipments	Rs. 227301.00
Electric goods for work site	Rs. 773223.00
Electrode Welding Cable and Accessories	Rs. 871294.00
Fuel & Lubricants	Rs. 3189205.00
General Consumables (Handgloves) contenvest	Rs. 2945086.00
Oxygen & D.A. Gas	Rs. 21223.00
Plywood for Shuttering	Rs. 2826674.00
Safety Appliances	Rs. 408392.00
Spares	Rs. 8232442.00
Staging Materials	Rs. 3888798.00
Shuttering & Walk-way (For Timber)	Rs. 4191982.00
Tools and Tackles	Rs. 3672296.00
Total	Rs. 3,12,47,916.00"

21) It is also pertinent to understand the meaning of the word 'information' in its true sense. According to the Oxford Dictionary, 'information' means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term 'information' as the act or process of informing, communication or reception of knowledge. The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute 'information' for the purposes of the State Act. But the word "information" used in the aforesaid Section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. Suppose a mistake in the original order of

assessment is not discovered by the Assessing Officer, on further scrutiny, if it came to the notice of another assessor or even by a subordinate or a superior officer, it would be considered as information disclosed to the incumbent officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Officer in such circumstances is in one sense extraneous to the record. It will be information in his possession within the meaning of Section 19 of the State Act. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment or wrong assessment.

22) There are a catena of judgments of this Court holding that assessment proceedings can be reopened if the audit objection points out the factual information already available in the records and that it was overlooked or not taken into consideration. Similarly, if audit points out some information

or facts available outside the record or any arithmetical mistake, assessment can be re-opened.

23) In ***P.V.S. Beedies (supra)***, this Court has held as under:-

> **"3.** We are of the view that both the Tribunal and the High Court were in error in holding that the information given by internal audit party could not be treated as information within the meaning of Section 147(*b*) of the Income Tax Act. The audit party has merely pointed out a fact which has been overlooked by the Income Tax Officer in the assessment. The fact that the recognition granted to this charitable trust had expired on 22-9-1992 was not noticed by the Income Tax Officer. This is not a case of information on a question of law. The dispute as to whether reopening is permissible after audit party expresses an opinion on a question of law is now being considered by a larger Bench of this Court. **There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law.** In view of that we hold that reopening of the case under Section 147(*b*) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent."
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> (**emphasis supplied**)

24) Similarly, in ***Commissioner of Income Tax, U.P., Lucknow*** vs. ***M/s Gurbux Rai Harbux Rai*** (1971) 3 SCC 654, this Court has held as under:-

> "6. Section 15 of the Act provides that if in consequence of definite information which has come into the possession of the Excess Profits Tax Officer he discovers that profits of any chargeable accounting period have escaped assessment, etc., he may at any time serve a notice containing all or any of the requirements which may be included in a notice under

Section 13 and may proceed to assess or reassess the amount of such profits liable to excess profits tax. The power so conferred can be exercised in the course of the original assessment or reassessment. It is essential, according to the law laid down by this Court, that before any action can be taken or an order made under Section 10-A there should be a proceeding which should be pending for assessment or reassessment of excess profits tax....."

"7. On the first question the submission of Mr M.C. Chagla for the assessee is that there was no definite information which had come into possession of the Tax Officer from which it could be said that he had discovered that profits of the relevant chargeable accounting period had escaped assessment. We are unable to agree. The Appellate Assistant Commissioner had made an order on October 10, 1947, in the proceedings relating to the assessment of income tax of the assessee that there had been only a partial partition in respect of the movable property business of Gurbux Rai. That was certainly an information which came into the possession of the Excess Profits Tax Officer not because of any change of opinion by himself but because of the decision of the Appellate Assistant Commissioner in the income tax proceedings. **This Court has consistently held that the Income Tax Officer would have jurisdiction to initiate proceedings under Section 34(1)(*b*) of the Income Tax Act, 1922, which is in pari materia with Section 15 of the Act if he acted on information received from the decision of the superior authorities or the court even in the assessment proceedings. (See *R.B. Bansilal Abirchand Firm* v. *CIT*[1] and *Assistant Controller of Estate Duty, Hyderabad* v. *Nawab Sir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad and others.*** It has next been urged that the alleged object of having a partial partition, namely, of reducing the liability to excess profits tax had never been examined by the Appellate Assistant Commissioner in the income tax proceedings and therefore it could not be said that there had been escapement of income as a result of information derived from his order. The Appellate Assistant Commissioner apparently did not go into that question because the proceedings before him related to assessment of income tax. Section 10-A of the Act is a special provision which deals with the transactions designed to avoid or reduce liability to excess profits tax. The information which came into possession of the Excess Profits

> Tax Officer of partial partition having been effected was relevant for the purpose of Section 15 and once he had initiated proceedings under that section he was perfectly competent and had jurisdiction to examine for the purpose of Section 10-A whether partial partition had been effected for avoidance or reduction of liability to excess profits tax. The first question, therefore, should have been answered against the assessee and in favour of the Revenue."
>
> (**emphasis supplied**)

25) In ***M/s Phool Chand Bajrang Lal and Another*** vs. ***Income Tax Officer & Another*** (1993) 4 SCC 77 this Court has held as under:-

> "25..... He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information....."

26) The contention whether finding the information from the very facts that were already available on record amounts to information for the purpose of Section 19 of the State Act, it would be sufficient to refer to a judgment of this Court in ***Anandjiharidas & Co.*** vs. ***S.P. Kasture*** AIR 1968 SC 565 wherein it was held that a fact which was already there in records doesn't by its mere availability becomes an item of

"information" till the time it has been brought to the notice of assessing authority. Hence, the audit objections were well within the parameters of being construed as 'information' for the purpose of section 19 of the State Act.

27) The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to re-opening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under assessed and the assessment in such a case would be valid even if the materials, on the basis of which the earlier assessing authority passed the order and the successor assessing authority proceeded, were same. The question still is as to whether in the present case, the assessing authority was satisfied or not.

28) At this stage, we deem it appropriate to reproduce the matter dealt with between the audit team and the assessing authority which led to the initiation of re-assessment proceedings under Section 19 of the State Act which is as under:-

"Part – II
Section – 'A'

Para 1. Non levy of purchase tax	Rs. 24,19,385.31
Name of the dealer	M/s Larsen & Toubro Ltd., ECC Group, Jamshedpur
Registration No.	JU 848 ®
Nature of Business	Works Contract
Asstt. Year	1991-92
Date of Order	24.01.1996
G.T.O. Determined	Rs. 17,57,01,372.00
Less: Sale of tax paid goods	Rs. 1,31,75,779.63
	Rs. 16,25,25,592.37
Less: Works done by sub-contractor	Rs. 27,17,304.00
	Rs. 15,98,08,208.37
Less: Labour charges and overhead charges	Rs. 11,91,66,742.38

Rs. 4,06,41,465.99

Tax was levied	
@ 4% on Rs. 17,48,096.90	Rs. 69,923.00
@ 8% on Rs. 1,96,71,099.14	Rs. 15,73,678.93
@ 9% on Rs. 1,45,34,488.10	Rs. 13,08,103.92
@ 10% on Rs. 2,048.00	Rs. 204.80
@ 11% on Rs. 4,82,125.70	Rs. 53,033.86
@ 12% on Rs. 42,03,608.15	Rs. 5,04,432.97
	Rs. 35,09,387.36
Add: Tax @ 1% on Rs. 5,55,08,612.25	Rs. 5,55,086.12
	Rs. 40,64,473.48
Surcharge @ 10% on Rs. 39,94,549.60	Rs. 3,99,454.00
	Rs. 44,63,928.44
Penalty U/S 16 (8)	Rs. 920.00
	Rs. 44,64,848.44

The Scrutiny of assessment order revealed that the dealer was allowed exemption of Rs. 11,91,66,742.38 on account of labour charges and overhead charges claimed as detailed below:

Labour Charges	Rs. 7,02,77,549.00
Overhead charges	Rs. 1,87,15,545.00
Goods consumed in course of execution of work	Rs. 3,12,47,916.00
	Rs. 12,02,41,010.00

Out of the above claim, a sum of Rs. 10,74,267.62 to us disallowed as below:

Tax paid claim disallowed	Rs. 3,50,698.37
Recovery of cement taxable	Rs. 2,20,972.50
Amount of plant hire charges	Rs. 5,02,596.75
	Rs.10,74,267.62

The dealer had furnished the statement of material utilized in the contract work and goods consumed for own use. Scrutiny of assessment order revealed that the dealer was allowed exemption on Rs. 3,12,47,916.00 being the amount of goods consumed or used itself in course of execution of work, details of which were discussed in the assessment order. It had been stated by the assessing authority that such goods were purchased on payment of tax, but no declaration in form IX C along with other evidences were kept on record. Production of declaration form in IX C was mandatory one and hence the claim was not allowable.

The entire materials received from outside the State or purchased within the State without payment of tax was normally leviable to tax at specified rates under section 12 of B.F. Act 1981. Under section 4 of the Act ibid, every dealer liable to pay under section 3 of the Act, if otherwise disposes

the goods in any manner other than by way of sale in the State was also liable to purchase tax. In this connection a reference to the judgement of Hon'ble Karnataka High Court and duly confirmed by the Hon'ble Supreme Court in the case of Chevvabbo Vs. State of Karnataka (1986) 62 STG 194 Se) is invited ……. Disposal of goods in this section (Similar to those Karnataka) was clarified as transfer of title over the goods otherwise than sale, included gifts, own use or consumption section 4 of the Act (B.F. Act) is similar to section 7 A of Tamil Nadu General Court in the case of the State of Tamil Nadu Vs. M.K. Kandaswami (1975 36 STC 191) where it was held that (1) this Section is a separate charging provision in the Act and is not subject to section 3 and (ii) brings to tax goods, the sale of which would normally have been taxed at the same point or other in the State but could not be taxed even due to destroying them or other reasons. Thus the purchase tax was leviable on goods consumed for own use. Since cost price/purchase price was reflected as value of goods consumed for own use of the dealer, the tax at the rate specified in section 12 of the Act ibid was leviable. In this case, even if same charges like Electrodes, Welding Cables, welding appliances, fuel and lubricants, oxygen and P.A. Gas safety, safety appliances valued at Rs. 44,90,114.00 was not considered as taxable, the consumable goods worth Rs. 2,67,57,802.00 attracted levying of tax at specified rates.

The case may please be re-examined in the light of above observation and levying of purchase tax amounting to Rs.24,19,385.31 (including additional tax and surcharge) as calculated below may be considered under intimation to audit.

S. No.	Name of Goods	Purchase value of goods	Rate applicable	Non-levy of purchase tax
1.	Camp Equipment, general consumable, plywood for shuttering spares and staying material	Rs. 1,81,20,301.00	8%	Rs. 14,49,624.08

2.	Electrical Goods and Timber	Rs. 49,65,205.00	12%	Rs. 5,95,824.60
3.	Tools & Tackles	Rs. 36,72,296.00	4%	Rs. 1,46,891.84
				Rs.21,92,340.52
				Rs. 20,454.48
	Addl. Tax @ 1% on 20,45,448.68			Rs.22,12,795.00
				Rs. 2,06,590.31
	Surcharge @ 10% on 20,65,903.16			Rs.24,19,385.31

The use of fuel and lubricants may please be bifurcated and value of lubricants only may be levied to tax.

On being pointed out in audit, it was stated that since the goods had not been transferred to contractee co-under the provisions of works contract, but it had been consumed and so it does not come under the purview of taxation. The reply is not tanable in view of the above judgements and hence the case needed to be reviewed."

(emphasis supplied)

29) From a perusal of the last paragraph of the aforementioned report of the audit party, it is clear that the Assessing Officer was of the opinion that as the goods had not been transferred to appellant-Company but had been consumed, so it does not come under the purview of taxation. In other words, the Assessing Officer was not satisfied on the basis of information given by the audit party that any of the turnover of the appellant-Company had escaped assessment

so as to invoke Section 19 of the State Act. From the above, it also appears that the assessing officer had to issue notice on the ground of direction issued by the audit party and not on his personal satisfaction which is not permissible under law.

30) In view of the above discussion, we are of the considered view that the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur is without jurisdiction and the High Court was not right in dismissing the petition filed by the appellant-Company. We, therefore, allow the appeal and set aside the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur as well as the order dated 17.11.2006 passed by the Division Bench of the High Court of Jharkhand. However, the parties shall bear their own costs.

.....J.
(MADAN B. LOKUR)

.....J.
(R.K. AGRAWAL)

NEW DELHI;
MARCH 21, 2017.