

Rashtriya Ispat Nigam Ltd.

Vs

State of A.P.

Civil Appeals No. 16643 of 1996 With Nos. 16644 to 16650 of 1996, 624, 652, 180-183, 6312-6315 of 1997

(S. P. Bharucha, M Jagannadha Rao JJ)

18.02.1998

ORDER

1. The High Court, in the judgment and order under appeal, has found that the clauses of the contracts in question are very similar to the relevant clause of the contract which was considered by this Court in N. M. Goel and Co. v. STO [(1989) 1 SCC 335 : 1989 SCC (Tax) 74]. We have been taken by learned counsel for the appellants through the clauses in question, upon the basis of which both the Tribunal and then the High Court concluded the matter against the appellants and are satisfied that they are substantially similar to the clause that was considered in Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] and to the same effect.

2. Learned counsel submitted that Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] dealt with a different issue and, therefore, did not cover what is in question before us. In para 7 of the judgment in Goel Case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] it is said : (SCC p. 339)

"The question, therefore, was whether there was sale of iron, steel and cement by the PVRD while supplying those materials for the construction work undertaken by the appellant."

Again, in para 8 it is said : (SCC pp. 339-40)

"8. The question, therefore, is whether there was sale of goods in view of the contract between the parties whereunder the custody and control of the goods remained with the PWD and goods were only used in the construction under the contract."

Upon this question, the judgment delivered an answer. It is the same question that is before us, and the answer that was delivered in Goel [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] judgment applies with equal force here. It was held : (SCC p. 344, para 11)

"For the purpose of performance, the contractor was bound to procure materials. But in order to ensure that quality materials are procured, the PWD undertook to supply such materials and stores as from time to time required by the contractor to be used for the purpose of performing the contract only. The value of such quantity of materials and stores so supplied was specified at a rate and got set off or deducted from any sum due or to become due thereafter to the contractor."

For this reason it was held that there was a sale, liable to tax. It was said : (SCC pp. 344-45, para 12)

"In the instant case, by use or consumption of materials in the work of construction, there was passing of the property in the goods to the assessee from the PWD. By appropriation and by the agreement, there was a sale as envisaged in terms of clause 10 set out hereinbefore. Therefore, in our opinion, there was a sale which was liable to tax."

3. Learned counsel submitted that there were differences between the present case and Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] in that in Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] the contractor had the liberty to retain the goods that were supplied to him by the employer; the deduction of the value thereof was on supply, not on use; there was no penal provision which would operate for non-return of such goods; the contract used the word "sale"; and there was no restriction on the use of the goods. We find no material difference between the contracts that we are to construe here and the contract in Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74]. Their effect, overall, is the same.

4. Certainly, there is no reason whatsoever to conclude, as was urged, that Goel case [(1989) 1 SCC 335 : 1989 SCC (Tax) 74] was not properly decided and that it requires reconsideration.

5. The appeals are dismissed, with costs.