(REPORTABLE)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2957 of 2007

Voltas Ltd. ....Appellant

Vs.

State of Gujarat .....Respondent

J U D G M E N T

AMITAVA ROY,J.

1. The oft encountered debate on the extent of tax liability based on the classification of the determinants of a levy in law seeks judicial scrutiny in the attendant factual conspectus. The appellant being aggrieved by the determination made by the High Court of Gujarat on the issue common to a reference under Section 69 of the Sales Tax Act, 1969 (for short hereinafter referred as to as the "Act") being Sales Tax Reference No.1/2004 and

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its appeal, i.e. Special Civil Application No. 12508/2002, against it, seeks redress against the judgment and order dated 4.09.2006 to that effect.

2. We have heard the learned counsel for the parties.

3. The indispensable skeletal facts introduce the appellant, M/s. Voltas Ltd. as a company incorporated under the Companies Act, 1956 engaged amongst others in the business of execution of jobs design, supply and installation of air-conditioning plants construed to be indivisible works contracts. It is a registered dealer under the Act. By a communication dated 22.10.1993 of M/s. Anupam Colours and Chemicals Industries, Bombay, an order was placed with it for water chilling plant at its factory at Vapi. The basic design parameters were enumerated in the work order as hereunder:

"1.Tonnage of Refrigeration .. 11 TR

2. Final temperature or chilled water to be made available for our process. .. 5 to 6°C

3.Quantity of chilled water 12,000 liters” .. liters(5 to 6° C) required for our process in about 10 hours.

Other specifications pertaining to the water chilling plant were advised to be in conformity with the assessee’s offer, as referred to therein. The work order insisted on the requirement of chilled water to be used directly for its process of manufacturing pigments with the assertion that sufficient precautions be taken to ensure that chilled water at 5 to 6 degree centigrade is available for such process. The letter emphasized as well that the assessee would provide the customer with the lay-out details, foundation drawing and other necessary information required for the erection of the plant. The essential segments of the works contracts involved, as would be

eventually relevant for the adjudicative exercise underway, were thus specified with distinct details in the work order.

4. The Act which is a legislation to consolidate and amend the law relating to the levy of tax on the sale or purchase of goods in the State of Gujarat has set out in Part-A of Schedule II-A thereof, the rates of the impost on the sale of goods involved in the execution of the works contracts, the relevant excerpt whereof is quoted as under:

Sr.No.	Description of works contract	Entry No. in Schedule-IIA of the Act	Regular rate of tax
1.	Installation of air-conditioners and A.C.coolers and for repairs thereof.	67	18%
2.	Furniture and fixtures partitions including contracts for interior decoration and repairs	104	8%

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	thereof		
3.	Fabrication and installation of lifts or elevators or escalators and for repairs thereof	120	8%
4.	Fabrication and installation of plant and machinery and repairs thereof	39	8%
5.	Construction of bodies on chassis of Motor Vehicles including three wheelers and for repairs thereof	128(5)	4%
6.	Ship building including construction of barges, Ferries Tugs Trawlers or Dredgers and for repairs thereof	186	4%

5. Section 55-A of the Act dwells on the scheme of composition of tax whereunder a dealer as referred to therein and in the circumstances and subject to such conditions as may be prescribed, is left with the option to pay in lieu of the amount of tax leviable from him under Section 7 or 8 in respect of any period, a lump sum by way of composition at the rate/rates, as may be fixed by

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the State Government by notification in the Official Gazette, having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. Apt it would be to quote Section 55A as well for ready reference:

> "SECTION 55A. COMPOSITION OF TAX.
>
> (1) The Commissioner may, in such circumstances and subject to such conditions as may be prescribed, permit every dealer referred to in sub-clause (f) of clause (10) of section 2 to pay at his option in lieu of the amount of tax (including additional tax) leviable from him under section 7,(or 8) in respect of any period, a lump sum by way of composition at the rate or rates as may be fixed by the State Government by Notification in the Official Gazette having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract.
>
> (2) The provisions of sections [13,51 and 55] shall not apply to a dealer who opts for composition of tax under sub-section (1).]"

Pursuant to this provision, and as empowered thereby, the Government of Gujarat vide the notification dated 18.10.1993 (for short hereinafter referred to as the Notification) did fix the rate of composition payable by such dealer (s) in lieu of the amount of tax otherwise leviable under the Act and as contemplated in the said statutory provision. As the stand-off centers around the rate of composition so fixed, essential it would be to set out the table of relevant entries to be immediately adverted to:

Sr.No.	Description of works contract	Rate of Composition
1.	Works contract for civil works like construction of buildings, bridges or roads, and for repairs thereof	2%
2.	Installation of air-conditioners and A.C.Coolers	15%
3.	Furniture and fixtures, Partitions including contracts for interior decoration	5%
4.	Fabrication and installation of lifts or elevators or escalators	10%

5.	Fabrication and installation of plant and machinery	5%
6.	Construction of bodies on chassis of motor vehicles including three wheelers	3%
7.	Ship building, including construction of barges, ferries tugs, trawlers or dredgers	2%
8.	Works contracts other than those mentioned above	12%

6. The recorded facts demonstrate that the appellant being under the impression qua the works contract ordered vide letter dated 22.10.1983 of M/s. Anupam Colour and Chemicals that it would attract the rate of composition prescribed against Entry No.5 hereinabove i.e. fabrication and installation of plant and machinery and not 15% against Entry No.2 i.e. installation of air-conditioners and AC coolers or 12% against Entry No.8 i.e. works contracts other than those mentioned, filed an application before the Deputy Commissioner of Sales Tax

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(Legal), Gujarat under Section 62 of the Act and insisted that the works contract involved came within the purview of Entry No.5 attracting the composition rate of tax at 5% only. The said revenue authority by its order dated 16.10.1996 however rejected the plea of the appellant and instead held that the works contract was covered by Entry No.2 as the assessee had to air-condition the plant to be erected by it. The margin of difference in the composition rates compared to the rates of tax for the identical works contract as catalogued in the Schedule to the Act did also weigh with the revenue authority in arriving at this conclusion.

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7. The appellant-assessee being dissatisfied did appeal against this finding before the Gujarat Sales Tax Tribunal, Ahmedabad (for short hereinafter referred to as the "Tribunal") which was registered as Appeal No. 16/1996. In course of the regular assessment for the

Assessment Year 1993-94, the concerned Sales Tax Officer, pursuant to the decision rendered by the Deputy Commissioner of Sales Tax on 16.10.1996, assessed the appellant by applying the composite rate of 15% for the works contract involved.

8. The appellant thus preferred an appeal against this assessment order before the Assistant Commissioner of Sales Tax, Ahmedabad and having failed before this forum did take the issue before the Tribunal in Second Appeal No.97/2001. These two appeals were also dismissed by the Tribunal vide its judgment and order dated 2.12.2002 whereafter the appellant invoked the writ jurisdiction of Gujarat High Court registered as Special Civil Application No. 12508/2002 which to reiterate, have been, by the impugned decision, disposed of along with Sales Tax Reference No.1/2004 laid by the

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Tribunal before it under Section 69 of the Act referring the following question of law:

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant's works contract for fabrication and installation of air-conditioning plants falls under Entry 2 and, therefore, taxable at the rate of 15% and not under Entry 5 under which it is taxable at the rate of 5% of the Schedule to the notification dated 18.10.93 issued under Section 55A of the Gujarat Sales Act, 1969?"

9. The High Court has answered the question referred in the affirmative thus sustaining the determination made by the revenue authorities/fora and the learned Tribunal declaring that the appellant's works contract for fabrication and for installation of air-conditioning plant did fall under Entry 2 of the Notification and was taxable at the composition rate of 15%.

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10. As the decision of the High Court assailed herein would disclose, in its view, the air-conditioning systems are classified according to their construction and operating characteristics and that it would be incorrect to differentiate between a central air-conditioning system and a room air-conditioner on the basis that the installation of air-conditioning plant requires preparation of plant whereas no such exercise is to be undertaken in case of installation of window air-conditioner etc. This is more so as the basic components applied in the manufacture of a air-conditioning plant, room air-conditioner or split air-conditioner are almost similar with difference in size and are not drastically different. The appellant's plea that in central air-conditioning system, fabrication has to be undertaken requiring preparation of plant etc. and that thus the central air-conditioning system has to be treated differently from a room air-

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conditioner or window air-conditioner etc. was not accepted because, according to the High Court, even in a room air-conditioner or window air-conditioner or split air-conditioner or AC cooler, elevation and lay out of the area requiring conditioning, has to be taken into consideration. The appellant's contention that Entry 5 dealt with all kinds of fabrication and installation of all kinds of plant and machinery and that there was no reason to exclude the installation of air-conditioning plant therefrom was negatived. The High Court was of the view that the composition scheme ought to be regarded as an exemption reprieve and thus needed to be construed strictly. Reliance was placed on the decision of this Court in *Sanden Vikas (India) Ltd. V. Collector of Central Excise, New Delhi (2003) 4 SCC 699* which held with reference to a particular entry in an exemption notification under the Central Excise Tariff

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Act, 1985 that the air-conditioner kit of a car did fall within the meaning of air-conditioners. It rejected the proposition that in common parlance air-conditioner, room air-conditioner, window air-conditioner, A.C. cooler, air-conditioning plant etc. were differently known and thus installation of air-conditioning plant would fall within Entry No.5.

11. Mr. Datar, the learned senior counsel for the appellant has assertively urged that having regard to the inalienable and essential constituents of the works contract as per the work order, fabrication as well as the installation of the water chilling plant were distinctly different items of works and thus the appellant was taxable at the composition rate of 5% against Entry No.5 of the Notification. Referring to the work order dated 22.10.1993 in particular, the learned senior counsel has maintained that the water chilling plant of the customer

was to be configured in conformity with the design parameters referred to therein and not on readymade specifications on the election or discretion of the appellant-assessee. According to Mr. Datar the design parameters prescribed by the customer, to cater to its requirement amongst others of the temperature of the chilled water and the volume thereof to be used for its process of manufacturing pigment did assuredly involve design and fabrication of the essential composition of the system which by no means could be equated with the installation thereof simplicitor as the end device. That the customer was persistently particular on the adherence to its prescribed design parameters as is apparent from the work order, demonstrates that the works contract, in any view of the matter, cannot be drawn within the contours of Entry 2 of the Notification, he urged.

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12. As against this, Ms. Madhvi Diwan, the learned counsel for the Revenue has argued that as the supply of the water chilling plant as per the works contract involved for all practicable purposes does not envisage any process of fabrication, the appellant is liable to be taxed at the composition rate of 15%. According to her, the basic and functional components of the water chilling plant being identical to that of an air-conditioning plant, the appellant's plea of application of 5% composite rate prescribed against Entry No.5 of the Notification is wholly misplaced and thus no interference with the impugned judgment and order is called for. Reliance was placed on the decision of this Court in *Sanden Vikas (India) supra.*

13. The rival assertions have received our due consideration. The competing entries requiring scrutiny to ascertain the correct composition rate of tax payable

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vis-à-vis the works contract involved are engrafted admittedly in the Notification issued by the Government of Gujarat in exercise of powers conferred by Section 55A of the Act. Logically thus, the interpretation necessitated by the rival orientations ought to be in furtherance of the underlying objective of the said provision. A plain perusal thereof would attest that thereby, in the circumstances to be prescribed, a dealer can be left at his option to pay in lieu of the amount of tax payable, a lump sum by way of composition, at the rate or rates as may be fixed by the State Government having regard to the incidence of tax on the nature of the goods involved in the execution of total value of the works contract. Unmistakably, therefore, the State Government while fixing the composition rate of tax has to be mindful of the nature of the works contract executed and by no means can be oblivious thereof. Further, a composition

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rate of tax is in lieu of the amount of levy otherwise payable by the dealer under the Act. The scheme of composition as envisaged by Section 55A therefore in our comprehension does not admit of any synonymity with that of exemption as contemplated in law. This pre-supposition of the High Court as one of the contributing factors in concluding that the works contract in question did fall within the framework of Entry No.2 of the Notification is apparently erroneous.

14. As adverted to hereinabove, the work order in clear terms did enjoin that the design parameters pertaining to tonnage of refrigeration, final temperature of the water to be made available for the process of manufacturing pigments and the quantity of the chilled water essential therefor were indispensable and were in addition to the other specifications as offered by the appellant. The rigour of the insistence for the adherence

to the design parameters is patent also from the request of the customer requiring the appellant to provide it with the lay out detail, foundation drawing and other necessary information essential for the erection of the water chilling plant. The exercise as a whole as contemplated by the work order thus was neither intended nor can be reduced to mere installation of the finally emerging apparatus. The work order noticeably did not refer to any readymade or instantly available devices, meeting the requirements of the customer so much so to be only installed at its factory. Instead, the work order had been apparently tailor-made to the requirements from which no departure was intended or comprehended. It is in this perspective that the word "fabrication" appearing in Entry No.5 of the Notification assumes a decisive significance.

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15. The legislative intendment entrenched in Section 55A of the Act to maintain a direct correlation between the composition rates of tax as the Notification would reveal and the description of the corresponding works contract is patent. Understandably, the word “fabrication” had not been applied in the works contract for installation of air-conditioners and A.C. coolers contained in Entry No.2 of the Notification. The author of the said Notification, however, did consciously include the expression “fabrication” while describing the works contract enumerated in Entry 5 thereof. Having regard to the inseparable interdependence between the description of a works contract and the corresponding composition rate of tax, none of the inherent components of the works to be executed can either be ignored or disregarded for identifying the correct composition rate of the levy under the Act. Any other approach could tantamount to doing

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violence not only to the legislative purpose conveyed by Section 55A but also the language of its yield i.e. the Notification seeking to promote the statutory end. Viewed in that context, mere omission of the expressions "air-conditioners" and "A.C. coolers" in Entry No.5 would not be of any definitive consequence. The words plant and machinery applied in Entry 5 are otherwise compendious enough to include air-conditioners and A.C. coolers, if the works contract involved require fabrication as well as installation thereof.

16. The word "fabrication" as defined in the Aiyan's Advanced Law Lexicon (Vol.II), 3rd Edition 2005 is "to manufacture".

17. The Oxford Dictionary defines the word "fabrication" to mean to construct or manufacture an industrial product.

18. The word “manufacture” as per the Aiyan’s Advanced Law Lexicon (Vol.II) in its plainest form and shorn of other details is the process of transforming or fashioning of raw materials into a change of form for use. The process of fabrication therefore conceptually would involve a lay out for the ultimate device to be installed, preceded by a design of the parameters prescribed, configuration of the resultant components, and integration thereof to structure the ultimate mechanism or product. Installation thereof would be a subsequent step to finally position the plant to complete the works contract. As fabrication in terms of the work order in the instant case is a distinctly independent yet integral segment of the works contract contributing to the final physical form of the water chilling plant with the characteristics intended, it cannot be construed to be, synonymous to the installation thereof.

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19. The High Court, as the impugned judgment would exhibit, had confined itself wholly to the components of various air-conditioning devices available and the range of the use thereof and in our estimate had missed the significant aspect of “fabrication” integrally involved in the works contract to supply the water chilling plant with the design parameters stipulated by the customer. The High Court did adopt a general approach vis-a-vis the air-conditioning devices commercially available in different forms dehors the singular factual aspects of the work order constituting the works contract. The High Court, thus, in our view, by overlooking the component of fabrication in the works contract opined that the same was within the purview of Entry No.2 and not Entry No.5. The description of the works contract, to reiterate, being of determinative bearing for ascertaining the composition rate of tax, we are of the unhesitant opinion,

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in the face of the design parameters insisted upon in the work order and consequential process of fabrication involved to cater thereto, that the works contract involved squarely falls within the ambit of Entry No.5 of the Notification. The margin of difference in rates of tax as prescribed by the Act compared to those mentioned in the Notification ipso facto does not detract from this conclusion. This consideration per se cannot override the decisive characteristics of the works contract otherwise unequivocally spelt out by the work order.

20. The primary canon of interpretation of a taxing statute hallowed by time is underlined by the classic statement of ROWLATT,J. in *Cape Brandy Syndicate v. Inland Revenue Commnrs. (1921) 1 KB 64 at p.71* as extracted hereunder:

> "In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity

> about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

It is trite as well that in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notion that may be entertained by a Court which may appear to be it just and expedient. Even prior in point of time, TINDAL, CJ in *Sussex Peerage case (1844) 11 C1 & Fin 85 : 8 ER 1034(HL)* had propounded thus:

> "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law-giver."

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These views have with time resonated in various judicial pronouncements with unambiguous approval of this Court as well amongst others in *Income Tax Officer, Tuticorin vs. T.S.Devinatha Nadar & Ors. (1968)68 ITR 252 and very recently in Commissioner of Income Tax-III vs. Calcutta Knitwears, Ludhiana (2014) 6 SCC 444 and Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Pvt. Ltd. 2015 (1) SCC 1.* A plethora of decisions in this regard, available though, we do not wish to burden the instant narration therewith.

21. Qua the issue of classification of goods to determine the chargeability thereof and the rates of levy applicable, it is no longer res-integra that the burden of proof is on the taxing authority to demonstrate that a particular class of goods or item in question is taxable in the manner claimed by them and that mere assertion in that

regard is of no avail as has been enunciated by this Court in *U.O.I. & Ors. vs. Garware Nylones Ltd.etc. (1996) 10 SCC 413* and relied upon with approval in *HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh (2006) 5 SCC 208*.

22. Equally, fundamental is the principle of statutory interpretation that no construction to a legislation ought to be provided so as to render a part of it otiose or redundant as held inter alia by this Court in *Maharashtra University of Health Sciences & Ors. vs. Satchikitsa Prasarak Mandal & Ors. (2010)3 SCC 786.*

23. That it is the cardinal principle of interpretation not to brush aside a word used in a statute or in a Notification issued under a statute and that full effect must be given to the every word of an instrument had been underscored by this Court in *The South Central Railway Employees Co-operative Credit Society*

Employees Union, Secundrabad vs. The Registrar of Co-operative Societies & Ors. reported in (1998) 2 SCC 580. The Notification in the instant case being apparently statutory in nature is akin to subordinate legislation to actualize and advance the legislative intent engrafted in Section 55A. It not only owes its existence to the Act but would also be amenable to the cardinal principles of interpretation adverted to herein above.

24. In the overall legal and factual perspectives as obtained herein, any endeavour to drag the works contract involved within the framework of Entry No.2 would be repugnant to the basic principles of interpretation of statutes and subordinate legislations like the statutory Notification under Section 55A of the Act. To exclude the work of fabrication from the works contract as per the work order would render it (works contract) truncated to a form not intended by the

customer. This would strike as well at the root of the mandate of correlation of a works contract and the corresponding composition rate of tax as envisaged by Section 55A of the Act and the Notification issued thereunder.

25. The decision of this Court in Sanden Vikas (India) Ltd.(supra) is of no avail to the revenue vis-à-vis the issue falling for scrutiny herein.

26. In the face of the determinations made herein above, the inescapable conclusion is that the appellant's works contract for fabrication and installation of water chilling plant at the factory of Anupam Colours and Chemicals at Vapi would fall under Entry 5 of the Schedule to the Notification dated 18.10.1993 issued under Section 55A of the Act and would be taxable at the rate of 5% as prescribed thereby. The impugned decision dated 4.9.2006 of the High Court of Gujarat at Ahmedabad in

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Sales Tax Reference No.1/2004 and Special Civil Appeal No.12508/2002 and other determinations as are contrary to the views expressed herein are hereby set aside.

27. The Civil Appeal is allowed**.**

.....CJ.

.....J.
(Arun Mishra)

.....J.
(Amitava Roy)

New Delhi,
Dated: April 8, 2015

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