Frontline Wind Energy Private Limited v. The Assistant Commissioner (ST)

Tax and a hundred per cent penalty confirmed on the entire annual-report value of a windmill undertaking sold as a going concern, contrary to the department's own earlier notice accepting that the sale consideration was not taxable. At issue: an assessm

Date of Order: January 2, 2025
Case Law No: GIB-MHC-2025-59
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background.

The petitioner had acquired a wind electric generator park of twenty windmills by slump sale in 2015 and sold that business to Bilal Match Works under a sale of business agreement dated 14.06.2019 for a consideration of Rs. 9,50,00,000. Relying on the figure of Rs. 10,34,32,205 appearing in the petitioner's sixth annual report for FY 2019-20, being cost of machinery plus profit on sale, the assessment order dated 26.11.2021 confirmed tax of Rs. 93,08,898 each under CGST and SGST together with penalty at one hundred per cent under Section 122(1).

Observations of the Court.

The Court pointed to the department's own notice dated 21.10.2021, which had recorded that where a person ceases to be a taxable person, goods forming part of the assets of the business are deemed to be supplied immediately before he ceases to be a taxable person unless the business is transferred as a going concern to another person, in terms of entry 4(c)(i) of Schedule II, and which had categorically admitted, on the strength of the agreement filed, that the consideration of Rs. 9,50,00,000 was not exigible to tax, proposing to bring only the differential of Rs. 84,32,205 to tax.

The impugned order having nonetheless confirmed the demand on the entire Rs. 10,34,32,205 taken from the annual report, the Court held the demand to be unsustainable, arbitrary and contrary to that notice.

Final verdict.

The writ petition was allowed, the impugned order was set aside and the matter was remitted to the respondent to pass a fresh order on merits and in accordance with law, after hearing the petitioner, within eight weeks from receipt of the order.