Sterling and Wilson Pvt. Ltd. v. Union of India & Others

Solar EPC contracts – whether 70:30 goods–services split was mandatory for 01.07.2017 to 31.12.2018; works contract v. composite supply; Section 74.

Date of Order: November 16, 2026
Case Law No: GIB-SC-2026-139
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The assessee, a turnkey EPC contractor supplying and installing Solar Power Generating (SPG) systems, paid CGST/SGST at 5% under Sl. No. 234 of Notification No. 1/2017-CT(Rate) for 01.07.2017 to 31.12.2018. The Joint Commissioner, Thane (order dated 17.01.2025, followed by Summary Order dated 24.01.2025) treated the supply as a works contract of immovable property and, relying on Circular No. 163/19/2021-GST dated 06.10.2021, demanded tax at 5% on 70% and 18% on 30% of the value by invoking extended limitation under Section 74, with penalty under Section 122(2)(b), aggregating to ₹53,35,80,964 including SGST. The Bombay High Court dismissed the writ petition on 28.07.2025 citing the alternate appellate remedy. The Supreme Court examined whether the writ should have been entertained, whether the 70:30 ratio could be forced on the pre-01.01.2019 period, whether SPG systems are immovable property so that the contract is a works contract, and whether Section 74 was validly invoked.

Final Verdict

The Court held the High Court's cursory dismissal unjustified, since the alternate-remedy rule is not a straitjacket formula (Para 5), and decided the matter on merits. It found that Notification No. 24/2018 operated only from 01.01.2019 and that the Circular merely stated that tax "can" be paid at 70:30 for the earlier period, which was an option and not a mandate (Paras 11, 17, 33). As the 70:30 regime came into existence only from 01.01.2019, no fraud, wilful misstatement or suppression could be imputed, making Section 74 untenable (Para 34). Following the Andhra Pradesh High Court's view (not challenged by Revenue), it held that a composite supply is a works contract only if the end product is immovable property; SPG systems are detachable from the foundation, which only gives stability, so they are movable and the supply is not a works contract (Paras 35–36). The later substitution of "solar power generating system" by "solar power generator" in Entry 201A cannot

operate retrospectively (Para 38). **The 70:30 ratio was only an option for the period prior to 01.01.2019, not a mandate; the demand is unsustainable on facts and in law, and the appeal is allowed, setting aside the orders dated 17.01.2025 and 24.01.2025, with parties bearing their own costs (Paras 39–40).**

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