Reportable

2026 INSC 1222

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. ..... of 2026
(@ Special Leave Petition (C) No. 23844 of 2025)

M/s. Sterling and Wilson Pvt. Ltd. ….. Appellant

versus

Union of India and others ….. Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.

2. This appeal is directed against the order dated 28.07.2025 passed by a Division Bench of the Bombay High Court, dismissing Writ Petition No. 4616 of 2025 filed by the appellant on the ground of availability of an efficacious alternate remedy. The writ petition was filed by the appellant assailing the order dated 17.01.2025 passed by the Joint Commissioner, Central Goods and Services Tax and Central Excise, Thane Commissionerate, Mumbai, and the Summary Order dated 24.01.2025 passed by the Superintendent of Central Tax, Range V, Santa Cruz, Mumbai. Thereby, the appellant was called upon to pay Central Goods and Services Tax (CGST) of ₹13,33,95,241/- along with penalty, aggregating to ₹26,67,90,482/-, coupled with equivalent State Goods and

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Reason:

Services Tax (SGST) and penalty. In effect, the appellant was required to pay ₹53,35,80,964/- towards taxes and penalties. Bypassing the appellate remedy provided under the statute, the appellant challenged the above orders directly before the High Court by way of the writ petition.

3. We may note that the High Court lost sight of the fact that two orders were challenged before it and mentioned only the order dated 24.01.2025 in its order dated 28.07.2025, whereby the appellant's writ petition was dismissed stating that no contentions had been advanced as to why the rule of exhaustion of an alternate remedy should be bypassed. The High Court opined that no grounds were made out to hold that the pre-deposit required to be made by the appellant was harsh or ought to be waived and left it open to the appellant to avail the alternate remedy by complying with the prescribed condition of pre-deposit.

4. By order dated 25.08.2025, this Court stayed the operation of the order dated 17.01.2025 passed by the Joint Commissioner, Central Goods and Services Tax and Central Excise, Thane, Maharashtra.

5. Having heard the learned senior counsel/counsel appearing for the parties and upon perusing the record, we find that the cursory dismissal of the writ petition by the High Court was not justified on facts, as arguable points were raised by the appellant in the writ petition which warranted consideration by the High Court, instead of it relegating the appellant to the appellate remedy. Availability of an alternate remedy barring the

invocation of a High Court's writ jurisdiction is not a straitjacketed formula to be applied without exception. Each case has to turn upon its own individual and peculiar facts and, viewed thus, the case on hand deserved examination on merits. In such a situation, we would have ordinarily remitted the matter to the High Court for appraisal afresh. However, as the matter was argued at length before us and we find that the issue has already been adjudicated by the Andhra Pradesh High Court, we deem it appropriate to deal with the matter on merits ourselves.

6. The issue relates to the CGST and SGST payable on the supply and installation of Solar Power Generating Systems (SPG systems) by the appellant during the period 01.07.2017 to 31.12.2018. The appellant is engaged in setting up such systems and undertakes all activities relating to supply and installation of the same at locations specified by customers. Such supply and installation is done on a turnkey basis, i.e., by way of an EPC (Engineering-Procurement-Construction) contract. The appellant undertook such contracts in various States across the country.

7. Section 9 of the Central Goods and Services Tax Act, 2017[1], is titled 'Levy and Collection' and Section 9(1) provides that CGST shall be levied on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under Section 15 thereof, and at such rates, not exceeding 20%, as may

[1] For brevity, 'the CGST Act'

be notified by the Government on the recommendations of the Goods and Services Tax Council, established under Article 279A of the Constitution, and collected in such manner as may be prescribed and shall be paid by the taxable person. In exercise of power under Section 9(1), Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 was issued by the Government of India, on the recommendations of the GST Council, notifying the rates of CGST in respect of goods, by segregating them in Schedules I, II, III, IV, V and VI. Schedule I dealt with the goods which were levied with central tax of 2.5%. Serial No. 234 therein read as under:

> 'Following renewable energy devices & parts for their manufacture
>
> (a) Bio-gas plant
> (b) Solar power based devices
> (c) Solar power generating system
> (d) Wind mills, Wind Operated Electricity Generator (WOEG)
> (e) Waste to energy plants / devices
> (f) Solar lantern / solar lamp
> (g) Ocean waves/tidal wave energy devices/plants'

8. In this regard, we may note that the Minutes of the 9th meeting of the GST Council held on 16.01.2017 recorded that the Secretary, Ministry of Power, had stated that implementation of GST would have an impact on the cost of generation, transmission and distribution of power. He stated that, annually 1100 billion units of power was generated and if, due to the tax structure in GST, rate of power per unit increased by 10 paisa, this would lead to a total additional burden of ₹11,000 crores on consumers and the proportionate burden on consumers in industrial and commercial

sectors would be much higher due to cross subsidisation in those sectors. He stated that, keeping this in view, different scenarios for structuring the GST rates for power sector were being proposed. The Secretary, Ministry of New and Renewable Energy, observed that if inputs for the renewable energy sector were taxed at 18%, there would be an increase in the cost of power per unit by 30-40 paisa for wind-based power plants and 40-50 paisa for solar-based power plants. He suggested that supplies to the renewable energy sector should either be treated as zero-rated or as deemed export.

9. Pursuant thereto, at its 14th meeting held on 18/19.05.2017, the GST Council included renewable energy devices and spare parts for their manufacture in the list of goods at 5% GST(CGST+SGST). Thereafter, in its 15th meeting held on 03.06.2017, the GST Council recommended that photo voltaic cells, whether assembled in modules or made up into panels, may be added in the 5% rate column, as they were also renewable energy devices. Correspondingly, in the 18% rate column, it was recommended that the part-entry which included photo voltaic cells, whether assembled in modules or made up into panels, may be omitted. Based on these recommendations of the GST Council, the Government brought out the aforestated Notification No. 1/2017-Central Tax (State) dated 28.06.2017, wherein renewable energy devices and parts were subjected to levy of

2.5% towards CGST, implying a corresponding 2.5% towards SGST. Significantly, a SPG system, as a whole, was shown in Serial No. 234.

10. Further, acting upon the recommendations of the GST Council, the Government of India, by way of Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 issued in exercise of power conferred by Sections 9(1), 9(3), 9(4), 11(1), 15(5), 16(1) and 148 of the CGST Act, levied central tax on intra-State supply of services of the description specified in Column 3 of the table at the rate specified in Column 4 thereof. 'Construction services' were specified in Column 3 and a composite supply of a works contract, as defined in Section 2(119) of the CGST Act, was subjected to 9% central tax in Column 4 thereof.

11. While so, in its 31st meeting held on 22.12.2018, the GST Council considered the Fitment Committee's recommendations for changing the GST rate for SPG systems and other renewable energy systems supplied under EPC contracts. Noting that the rate of 5% had been prescribed on renewable energy devices and parts for their manufacture, including SPG systems, the Council observed that, where a SPG system was either supplied under 2 or 3 contracts for supply of parts, supply of services or a combination thereof, the applicability of the tax rate to supplies of equipment and services under an EPC contract for SPG systems led to a large number of disputes. The Council noted that the Fitment Committee had examined the matter and felt that the issue could be resolved by

assigning a value to the supplies, falling under Serial No. 234, when supplied along with other services under EPC contracts and goods not covered by the said entry. The GST Council opined that it would be appropriate to take the deemed value of goods falling under Serial No. 234 as 70% of the total amount chargeable and the remaining 30% value may be deemed to be the value of supply of services. Basing on this recommendation, Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 was issued by the Government of India, amending Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017. Against Serial No. 234, an *'Explanation'* was inserted, which reads as under:-

> "*Explanation*: If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S.No.38 of the Table mentioned in the notification No.11/2017 – Central Tax (Rate), dated 28th June, 2017 [G.S.R.690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service"

Clause 2 therein spelt out that this Notification came into force on 01.01.2019. In effect, it had no retrospective operation as regards splitting up of composite supply of goods and services made prior to 01.01.2019 for the renewable energy devices and parts specified in Serial No. 234 of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017.

12. Thus, prior to 01.01.2019, if the value of the supply and installation of the SPG system was hypothetically ₹10,000/-, the CGST and SGST payable thereon @ 5% worked out to ₹500/-. However, after 01.01.2019,

in the light of the new regime of 70:30 ratio, the rate of 5% was applicable on 70% of the hypothetical sum of ₹10,000/-, working out to ₹350/-, while the services component of 30% was subjected to the rate of 18% and resulted in tax of ₹540/-. In all, the tax payable aggregated to ₹890/-, working out to a net percentage of 8.9%.

13. While so, pursuant to the amendment made in Notification No. 1/2017 dated 28.06.2017, an amendment was also made in Notification No. 11/2017 dated 28.06.2017, *vide* Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. Thereby, the Government of India inserted Serial No. 38 in Notification No. 11/2017. This new entry reads as follows:

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
"38.	9954 or 9983 or 9987	Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power based devices (c) Solar power generating system (d) Wind mills, Wind Operated Electricity Generator (WOEG) (e) Waste to energy plants / devices (f) Ocean waves/tidal waves energy devices/ plants *Explanation*:- This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No.1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 673(E) dated 28th June, 2017.	9	-"

Clause 2 therein spelt out that this notification also came into force on 01.01.2019. Thus, both notifications came into effect on the same day.

14. While matters stood thus, at its 45th meeting held on 17.09.2021, the GST Council noted that, after the amendments made with effect from 01.01.2019, solar EPC contracts effectively attracted the rate of 8.9% (70:30 ratio for goods and services), as per its recommendations in the 31st and 37th meetings. It was also noted that the new GST rate scheme for renewable energy projects, prescribing 70:30 ratio for goods and services was prescribed with effect from 01.01.2019 and the said method was prospective and was applicable with effect from the said date. The issue prior to 01.01.2019 was considered by the Fitment Committee which recommended to issue a clarification that a taxpayer can pay in terms of 70:30 ratio as described in the Notification No. 24/2018 dated 31.12.2018 even for solar power projects completed before 01.01.2019. The caveat added by the Fitment Committee was that no refunds would be provided in case the tax had been paid on the entire contract value at 18%.

15. Basing on this recommendation, Circular No. 163/19/2021-GST dated 06.10.2021 was issued clarifying the GST rates and classification (goods) based on the recommendations of the GST Council in its 45th meeting. As regards applicability of GST rates on solar PV power projects, it was noted that representations were received seeking a clarification regarding the GST rates applicable on such projects before 01.01.2019. It was further noted that this issue had arisen in the context of Notification No. 24/2018 dated 31.12.2018, whereby an 'Explanation' had been

inserted in the said notification to the effect that GST could be paid in terms of 70:30 ratio for goods and services respectively with effect from 01.01.2019. The request received was that the same ratio (for deemed value) may be applied in respect of supplies made before 01.01.2019 also. The Government noted that, as per this 'Explanation', if the goods specified in this entry were supplied by a supplier along with supplies of other goods and services, one of which was a taxable service under Serial No. 38 in Notification No. 11/2017 dated 28.06.2017, the value of the supply of goods for the purposes of this entry shall be deemed to be 70% of the gross consideration charged for all such supplies and the remaining 30% shall be deemed to be the value of the said taxable service. It was noted that this mechanism for valuation of supply was recommended by the GST Council, considering that it adequately represented the value of goods and services involved in the supply. Taking note of the GST Council's recommendation, it was clarified by the Government that GST on such specified renewable energy projects can be paid in terms of 70:30 ratio for goods and services, respectively, for the period 01.07.2017 to 31.12.2018, in the same manner as had been prescribed for the period after 01.01.2019, as per the 'Explanation' in Notification No. 24/2018 dated 31.12.2018. The Government, however, made it clear that no refunds would be granted if GST had already been paid and was more than the amount determined using this mechanism.

16. At this stage, we may note that Circular No. 163/19/2021-GST dated 06.10.2021 was issued by the Central Board of Indirect Taxes and Customs in exercise of power under Section 168 of the CGST Act. This provision states that the Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the CGST Act, issue such orders, instructions or directions as it may deem fit and, thereupon, all officers and other persons employed in the implementation of CGST Act shall observe and follow such orders, instructions or directions. The scheme of the CGST Act does not require such instructions and directions issued by the Board under Section 168 to be notified in the Official Gazette, under Section 2(80) of the CGST Act.

17. In any event, the aforestated clarification indicated in positive terms that an option was given to assessees to adopt the same mechanism that was introduced with effect from 01.01.2019 for the period prior thereto also. This is manifest from the fact that the clarification stated that GST on such renewable energy projects 'can' be paid in terms of 70:30 ratio for goods and services for the period 01.07.2017 to 31.12.2018 also, indicating that the choice was with the assessees. This being the position, it appears that the CGST authorities misunderstood this clarification to imply a mandate that even for the period prior to 01.01.2019, all assessees were bound to implement the 70:30 ratio for payment of tax. It is on this basis that the appellant was called upon, by way of the show

cause-cum-demand notice dated 29.03.2023, as to why it should not be subjected to levy of tax at the 70:30 ratio and tax rates of 5% and 18%.

18. Pursuant to the said notice, the impugned order dated 17.01.2025 was passed by the Joint Commissioner, CGST & CX, Thane. Therein, he noted that the appellant was paying tax at the rate of 5%, considering it as a supply of goods falling under Serial No. 234 of Schedule I to Notification No. 1/2017 dated 28.06.2017 instead of 5% tax on 70% value and 18% tax on 30% value of the supply of goods and services. The Joint Commissioner opined that supply of SPG systems by the appellant was a composite supply, falling under the category of works contract services, defined under Section 2(119) of the CGST Act, but the appellant failed to discharge its tax liability upon such supply of SPG systems and paid tax at the rate of 5%. He further opined that, in the light of the amendments made and the Circular dated 06.10.2021, the applicable tax rates on the supply of solar PV power projects, effective during the period 01.07.2017 to 31.12.2018, would be 5% on 70% value of the supply and 18% on 30% value of the supply of SPG systems, in the same manner as had been prescribed for the period after 01.01.2019. He observed that, as the Circular dated 06.10.2021 did not discuss movable/immovable property, it would be irrelevant and immaterial to discuss whether a solar power plant was movable or immovable property to arrive at GST liability, in the light of the Explanation to Serial No. 234 in Schedule I to Notification No.

1/2017 dated 28.06.2017. He noted that installation of a SPG system has a permanent location, as it cannot be shifted to any other place without dismantling the same, and such installation would necessarily include civil work, such as development of site, structure foundation, building cable trenches, civil work relating to inverters and control buildings, storerooms, canopies and other civil structures and related activities, as set out in the scope of work and technical specifications of the agreement. He, therefore, summed up that a solar power plant was immovable property. Further, he noted that the term 'immovable property' was not defined in the CGST Act or the Rules made thereunder, but in the light of the judgments of this Court and of the High Courts, a solar power plant would have to be treated as immovable property. He concluded that the appellant had wilfully misstated and deliberately suppressed the facts and misclassified its supply, in order to minimize its tax liability, and short-paid taxes. He held that this act of the appellant rendered it liable to penalties under Section 122(2)(b) of the CGST Act and attracted the extended period of limitation for demand of tax under Section 74 thereof. Pursuant to his order dated 17.01.2025, Summary Order dated 24.01.2025 was issued by the Superintendent, Range V, Mumbai, calling upon the appellant to pay the determined taxes and penalties.

19. These were the orders that were subjected to challenge by the appellant in the subject writ petition filed before the Bombay High Court.

Pertinently, in the body of the writ petition, the appellant relied upon the decision dated 10.01.2025 of a Division Bench of the Andhra Pradesh High Court on the same issue in its own case, reported in ***Sterling and Wilson Pvt. Ltd. vs. Joint Commissioner, State Tax, Vijayawada***[2]. That case was filed by the appellant in the context of the tax demand dated 20.11.2019 for ₹63,00,19,512/- towards CGST and SGST, along with penalties for a like sum, for the period 30.11.2017 to 30.09.2018. The order dated 20.11.2019 was confirmed in appeal on 20.10.2020 to the extent of the tax demand, but the penalty had been reduced from ₹63,00,19,512/- to ₹6,30,01,952/-.

20. The contention of the Revenue before the High Court was that supply and installation of SPG systems by the appellant was in the nature of a composite supply of goods and services and the same was, therefore, to be treated as a works contract, as defined by Section 2(119) of the CGST Act. The Division Bench framed the issue as to whether the transaction should be treated as a simple composite supply or as a works contract. Reference was made to Note-6 of Schedule II to the CGST Act along with Sections 8 and 9 thereof and it was observed that a conjoint reading thereof revealed that every works contract was a composite supply but there could be a composite supply which did not fall within the ambit of a works contract.

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2 (2025) 26 Centax 301 (A.P.) = 2025 (95) G.S.T.L. 402 (A.P.)

21. Section 2(119) of the CGST Act defines a ‘works contract’ thus:-

> “2(119): "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”

22. The definition of ‘composite supply’ under Section 2(30) of the CGST Act reads as follows:

> "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
>
> *Illustration*. - Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

23. Note 6 in Schedule II to the CGST Act reads thus:-

> “6.Composite supply
> The following composite supplies shall be treated as a supply of services, namely:—
> (a) works contract as defined in clause (119) of section 2; and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.”

24. Elaborating on a combined contract for supply of goods and services, which answered the description of ‘composite supply’ but would still fall outside the ambit of a ‘works contract’, the Division Bench opined that the answer lies in the definition in Section 2(119) itself, as it stipulates that a composite supply of goods and services which results in construction, etc., of immovable property would be a works contract. The

Division Bench, therefore, concluded that the distinction between a 'works contract' and a 'composite supply' would be whether the end product was immovable or movable property. In that regard, the argument of the Revenue was that SPG systems would be immovable property. It would be apposite, at this stage, to take note of the case law considered by the Division Bench of the High Court.

25. In ***TTG Industries Ltd., Madras vs. Collector of Central Excise, Raipur***[3], this Court had held to the effect that machinery erected at the site of a purchaser would be exigible to levy under the Central Excise Act as immovable property as it could not be shifted without dismantling it and re-erecting it at another site. However, thereafter, in ***Commissioner of Central Excise, Ahmedabad vs. Solid and Correct Engineering Works and others***[4], this Court again went into the question as to what would amount to making of immovable property. Reference was made to Section 3(26) of the General Clauses Act, 1897, which defined immovable property to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth; and also to Section 3(36) thereof, which defined 'movable property' to loosely mean property of every description, except immovable property. It was noted that the term 'attached to the earth' in Section 3(26) was not

3 (2004) 4 SCC 751
4 (2010) 5 SCC 122 = 2010 (252) ELT 481 (SC)

defined separately therein, but Section 3 of the Transfer of Property Act, 1882, defined the expression 'attached to the earth' as either being rooted to the earth, as in the case of trees and shrubs; or embedded in the earth, as in the case of walls or buildings; or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached. It was noted that three distinct dimensions emerged from the above definition and the attachment of a hot mix plant with the help of nuts and bolts to a foundation of not more than 1½ feet depth, intended to provide stability to the working of that plant, did not qualify as being 'attached to the earth' under any one of those dimensions, i.e., rooted in the earth, embedded in the earth or attached to what is embedded for the permanent beneficial enjoyment of that to which it is attached.

26. Reference was also made by this Court to its earlier judgment in ***Sirpur Paper Mills Ltd. vs. Collector of Central Excise, Hyderabad***[5], wherein it was observed that whatever is embedded in the earth cannot be treated as immovable property straightaway, as a factory owner or even a householder may purchase a water pump and fix it on a cement base for operational efficiency and security, but that would not make the water pump an item of immovable property. It was opined that, merely because plant and machinery were fixed in the earth for better functioning, it would not automatically become immovable property. This Court,

5 (1998) 1 SCC 400

therefore, concluded in ***Solid and Correct Engineering Works*** (*supra*) that merely because the machine was fixed by nuts and bolts to a foundation, so as to provide wobble-free operation to the machine and not with an intention to permanently attach it to the earth, it would not amount to immovable property. It was observed that an attachment of this kind, without the necessary intent of making the same permanent, would not constitute embedding or attachment in the sense that would permanently make the machine part and parcel of the earth.

27. ***Duncans Industries Ltd. vs. State of U.P. and others***[6] was a case relating to stamp duty payable on a conveyance deed, whereby a factory premises was transferred. The cost of the plant and machinery were also sought to be included by the authorities to fix the stamp duty. The vendor and purchaser, however, contended that the same were movable property and need not be included. This Court found that the plant and machinery were permanently embedded in the earth for running the factory and there was no proposal to remove them for the purpose of the sale and held that they would, therefore, constitute part of the immovable property sold under the conveyance deed. ***Sirpur Paper Mills Ltd.*** (*supra*) was distinguished on facts and it was held that the question whether machinery embedded in the earth can be treated as movable/immovable property would depend on the facts of each case and the intention of the parties.

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6 (2000) 1 SCC 633

28. Applying these precedents, the Andhra Pradesh High Court found, on facts, that the appellant's SPG system was not embedded in the earth but was merely attached to a civil foundation that was so embedded. It was noted that such attachment was not for the permanent beneficial enjoyment of the civil foundation, the structure embedded in the earth, as the same was so embedded for beneficial enjoyment of the SPG system affixed thereon. Holding so, the High Court opined that the transaction did not fall within the meaning of a 'works contract' as defined by Section 2(119) of the CGST Act. Notably, the Revenue did not choose to challenge this decision of the High Court and the same attained finality.

29. Significantly, the Andhra Pradesh High Court had occasion to deal with an identical issue in ***M/s. Siemens Gamesa Renewable Power Private Limited vs. The Assistant Commissioner ST, Kavali Circle, Nellore, and others***[7] in the context of wind turbine generators erected on foundations. The issue was whether they would qualify as immovable property, in the context of whether supply and installation of the same would be a 'works contract' under Section 2(119) of the CGST Act. The High Court noted that, in ***Bharti Airtel Limited vs. Commissioner of Central Excise, Pune***[8], this Court had observed that the permanency test invoked in ***TTG Industries Limited*** (*supra*) could not be applied where

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7 2025 (12) TMI 1888

8 (2024) 19 SCC 1 = (2024) 132 GSTR 404 (SC)

the tower itself was bought and brought in a completely knocked-down or semi knocked-down condition and was erected and installed at the site. Observing that, in ***TTG Industries Limited*** (*supra*), it was stated that if the machinery cannot be shifted and re-erected without dismantling it the same would also be immovable property, this Court clarified that though a mobile tower could not be shifted without dismantling it, it had to be noted that it was bought and brought in a completely knocked-down or semi knocked-down condition and was erected and installed at the site, after assembling the parts, and if it is to be shifted to another location, it had to be dismantled and restored to a completely knocked-down or semi knocked-down condition and thereafter re-erected, which would not entail any damage to it. On this basis, this Court drew a distinction between the factual matrix of ***TTG Industries Limited*** (*supra*) and the case under consideration. Applying that distinction, the High Court noted that even in the case of wind turbine generators, various parts of the tower were brought to the site and then assembled to make up the tower. Reference was also made to the observation in ***Bharti Airtel Limited*** (*supra*) that, merely because certain articles were attached to the earth, it would not *ipso facto* make them immovable property. The High Court observed that, if such attachment to the earth was not intended to be permanent but was for providing support to the goods and to make their functioning more effective and such items could be dismantled without damage and without

any change in the nature of the goods, whereby they could be moved, such goods would not be immovable property. Notably, in ***Bharti Airtel Limited*** (*supra*), this Court had summarised the principles to determine the nature of the property thus:-

> 1. **Nature of annexation**: This test ascertains how firmly a property is attached to the earth. If the property is so attached that it cannot be removed or relocated without causing damage to it, it is an indication that it is immovable.
> 2. **Object of annexation**: If the attachment is for the permanent beneficial enjoyment of the land, the property is to be classified as immovable. Conversely, if the attachment is merely to facilitate the use of the item itself, it is to be treated as movable, even if the attachment is to an immovable property.
> 3. **Intendment of the parties**: The intention behind the attachment, whether express or implied, can be determinative of the nature of the property. If the parties intend that the property in issue is for permanent addition to the immovable property, it will be treated as immovable. If the attachment is not meant to be permanent, it indicates that it is movable.
> 4. **Functionality Test**: If the article is fixed to the ground to enhance the operational efficacy of the article and for making it stable and wobble free, it is an indication that such fixation is for the benefit of the article, such property is movable.
> 5. **Permanency Test**: If the property can be dismantled and relocated without any damage, the attachment cannot be said to be permanent but temporary and it can be considered to be movable.
> 6. **Marketability Test**: If the property, even if attached to the earth or to an immovable property, can be removed and sold in the market, it can be said to be movable.

30. Applying the above tests to wind turbine generators, the High Court opined that, as they could be removed and relocated; their attachment to the foundation was only for beneficial enjoyment of the generators; such attachment did not result in better enjoyment of the foundation; and as the intention of the parties was not to permanently fix the generators to the ground but only for better efficiency of the generators, the High Court held

that the same would have to be treated as movable property, amounting to goods for levy of tax under the CGST Act. The transaction was, therefore, held not to be a 'works contract'. Relevant to note, this decision was subjected to challenge before this Court in ***The Assistant Commissioner, ST, and others vs. M/s Siemens Gamesa Renewable Power Private Limited***[9] and the same were dismissed, observing that no grounds were found to interfere with the judgment of the High Court.

31. The Andhra Pradesh High Court again had cause to deal with this issue in ***M/s. Arka Green Power Private Limited vs. The State of Andhra Pradesh and others***[10]. Those cases related to supply of solar power devices, including solar power pumping systems. The same were supplied during the period July, 2017 to December, 2018. The Assessing Authority under the CGST Act opined that the transactions had to be treated as works contracts and determined the rate of tax at 18% for 30% of the turn-over and 5% for 70% of the turn-over. The appeals by the assessees resulted in reduction of penalty but not reduction of tax. The contention of the assessees before the High Court was that the supply of solar power pumping systems fell within Serial No. 234 of Schedule I to Notification No. 1/2017 dated 28.06.2017. The High Court, thereupon, opined that the mere attachment of the pumping system to a base would

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9 2026 (8) TMI 847 (SC)

10 Writ Petition No. 11989 of 2022 and batch, decided on 24.12.2025.

not make it immovable property and, accordingly, applied and followed its earlier decision dated 10.01.2025 in the appellant's case.

32. Reliance placed by the Revenue upon the decision of the Madhya Pradesh High Court in ***M/s. Rudraksha Allied Chemicals Pvt. Ltd. vs. Ordnance Factory, Itarsi, a unit of Munitions India Ltd., and others*** [11] is wholly misplaced as that was the case relating to a tender and the issue was whether the subject work constituted a 'works contract', so as to attract a particular policy. As held by this Court, time and again, whether a contract is one for a composite supply or whether it is a works contract would turn upon the individual facts of each case and the observations made in the aforestated judgment, in a totally different factual and contextual milieu, cannot be brought to bear in the case on hand.

33. Presently, we may note that, prior to introduction of the 70:30 ratio regime, the appellant was paying only 5% towards CGST and SGST upon supply and installation of SPG systems. This was in keeping with the recommendations of the GST Council and the resultant Government policy to promote renewable energy production by offering tax incentives. The amending Notification No. 24/2018 dated 31.12.2018 brought in a change by introducing the 70:30 ratio regime, but it came into effect only from 01.01.2019 and had no retrospective operation. Thereafter, Circular No. 163/19/2021-GST dated 06.10.2021 demonstrated that requests had

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[11] Writ Petition No. 29929 of 2025, decided on 22.05.2026

been received from assessees who wanted to avail the 70:30 ratio even for supply of goods and services made by them prior to 01.01.2019 and, accepting such requests, the GST Council clarified that tax on such specified renewable energy projects can be paid in terms of the 70:30 ratio for goods and services respectively even for the period 01.01.2017 to 31.12.2018, in the same manner as had been prescribed for the period after 31.12.2018. Thus, it is pristinely clear that only an option was given to assessees who wanted to take recourse to the new scheme, that came into effect from 01.01.2019, even for the period prior thereto if they so chose. There was no mandate, either in the Notification or in the Circular, that the 70:30 ratio had to be compulsorily applied to all the past transactions prior to 01.01.2019, irrespective of whether or not the assessee concerned chose to adopt it. Therefore, the notion of the authorities that the option given to the assessees, whereby they could adopt the 70:30 ratio even for supplies made prior to 01.01.2019, should be mandatorily applied across the board even to assessees who did not choose that option, is patently erroneous and wholly unsustainable.

34. Further, as the 70:30 ratio regime came into existence only from 01.01.2019, the question of imputing any fraud or wilful misstatement or suppression of facts to the appellant in the context of applying that ratio to its transactions during the prior period does not even arise, whereby Section 74 of the CGST Act could have been used against the appellant.

Invocation of extended limitation was, therefore, completely unsustainable on facts and in law. As was pointed out by this Court in ***M/s Tata Steel Limited vs. Union of India, through the Secretary, Ministry of Finance, and others***[12], it is not mere lip service to the provisions that is intended when an extended limitation is provided for recovering an excess benefit availed, short payment or excess refund, from the assessee, especially when the allegation is of fraud/wilful misrepresentation/ suppression. This Court observed that the foundational facts which led to the inference arrived at of fraud/wilful misrepresentation/suppression should be evident from the notice itself and mere employment of such words will not indicate application of mind, upon which alone the satisfaction can be arrived at. We need say no more.

35. The mere fact that the EPC contract executed by the appellant for supply and installation of the SPG systems included certain components of civil works also did not automatically mean that the transaction would be a 'works contract' as defined by Section 2(119) of the CGST Act. It is not in dispute that the SPG systems, viz., the solar photo voltaic panels/modules, installed by the appellant can be detached from the civil foundation to which they are attached and used elsewhere. SPG systems are not affixed to the civil foundation so as to result in the beneficial enjoyment of the foundation, which is embedded in the earth, as the civil

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foundation merely ensures that the SPG system affixed thereto remains firm and stable for its better utilization.

36. As rightly pointed out by the Andhra Pradesh High Court, every 'composite supply', in terms of Section 2(30) of the CGST Act, would not qualify as a 'works contract' under Section 2(119) thereof. To do so, the contract in question must relate to some activity pertaining to immovable property as an end product. The fact that a SPG system has to be fixed on a civil foundation for stability and to ensure proper functioning would not, by itself, convert it into immovable property. The law laid down by this Court, in the judgments referred to *supra*, puts it beyond doubt that affixation to something embedded in the earth would not *per se* qualify the object so affixed as immovable property. Applying the tests adumbrated by this Court, when a SPG system can be easily detached from the foundation and used elsewhere, it is impossible to accept the Revenue's contention that a SPG system must be treated as immovable property, so as to bring the contract for supply and installation thereof within the ambit of a works contract. The view consistently taken by the Andhra Pradesh High Court in this regard, in our considered opinion, is the correct view.

37. We may also note that, pursuant to the 45th meeting of the GST Council on 17.09.2021, the Government of India issued Notification No. 8/2021-Central Tax (Rate) dated 30.09.2021. Thereby, the entry in Serial

No. 234 of Schedule I to Notification No. 1/2017 dated 28.06.2017 was omitted and a new entry in Serial No. 201 A was inserted in Schedule II:

201A	84,85 or 94	Following renewable energy devices and parts for their manufacture:- (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants/devices; (f) Solar lantern/solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. *Explanation*:- If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S.No.38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [GSR 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service.

38. Notably, the entry in Serial No. 234 of Schedule I to Notification No. 1/2017 dated 28.06.2017 referred to a SPG system, whereas the present entry in Serial No. 201A left out the word ‘system’ and merely mentioned solar power generator. The fact that the Government deemed it appropriate to substitute the existing entry, viz., ‘solar power generator system’ with the entry ‘solar power generator’ indicates that, earlier, the entire SPG system was treated as a unit, which was subjected to central

tax @ 2.5%, but after substitution, it is only the solar power generator alone which is treated as a unit and not the entire SPG system. This substitution cannot be applied retrospectively to transactions relating to supply and installation of SPG systems prior to the above notification, when the entire SPG system was treated as a unit for taxation.

39. Viewed from any angle, we find that the action of the CGST authorities to be unsustainable on facts and in law, as they proceeded on the premise that the appellant was liable to pay tax on the supply and installation of SPG systems even for the period prior to 01.01.2019, by applying the 70:30 ratio to the contract value, though those anterior transactions were governed by a different regime altogether.

40. The appeal is accordingly allowed, setting aside the order dated 17.01.2025 passed by the Joint Commissioner, Central Goods and Services Tax and Central Excise, Thane Commissionerate, and the consequential order dated 24.01.2025 passed by the Superintendent of Central Tax, Range V, Santacruz, Mumbai.

Parties shall bear their own costs.

....., J
SANJAY KUMAR

….., J
SANJEEV SACHDEVA

November 16, 2026
New Delhi.