(2004) 05 JH CK 0066

In the Jharkhand High Court

Case No : Writ Petition (T) 283 of 2004

Associated Cement Companies Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 2
Bihar Finance Act, 1981 — Section 14
Bihar Sales Tax Rules, 1983 — Rule 3(4)

Citation : (2004) 2 JCR 594 : (2005) 139 STC 62

Hon'ble Judges : P.K. Balasubramanyan, C.J;Tapen Sen, J

Bench : Division Bench

Advocate : Y.V. Giri, Dhananjay Kr. Dubey and Raju Giri, for the Appellant; A.G. and K.K. Jhunjhunwala, GP-III, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—The writ petitioner was a assessee under the Bihar Finance Act. The writ petitioner, among other things, manufactures and sells cement. It had two factories for manufacture of cement within the State of Bihar. One was at Sindri and other was in Chaibasa. Both the units at Sindri and Chaibasa had separate registrations u/s 14 (corresponding to present Section 13) of the Bihar Act. The Company claimed that it had different outlets for sale of cement within the State of Bihar and sought permission to be registered in Patna Circle by invoking Rule 3(4} of the Bihar Sales Tax Rules, 1983. Such permission was granted and the Company was filing its returns before the concerned officer in Patna.

2. After reorganisation of the State under the Bihar Reorganisation Act, 2000, with effect from 15.11.2000, Sindri and Chaibasa became part of the State of Jharkhand. The petitioner, the assessee, continued to have separate registrations for the manufacturing units at Sindri and Chaibasa in the State of Jharkhand also, under the Finance Act. The petitioner made an application before the

Commissioner of Commercial Taxes, Jharkhand, Ranchi under Rule 3(4) of the Rules. By order dated 16.4.2001, the prayer was refused on the ground that the Company had the Sindri and Chaibasa Works separately registered under Rule 3 of the Sales Tax Rules, though on 17.4.2001, this Court directed the Commissioner to dispose of the application by a reasoned order in CWJC No. 1188 of 2001. On 28.7.2001, a consolidated registration was issued to the Cement Marketing Division of the Company excluding the two manufacturing units at Sindri and Chaibasa covered by separate registrations under the Act. The order dated 16.4.2001 was challenged in appeal before the Jharkhand Commercial Taxes Tribunal. The Tribunal, by its order dated 18.10.2001, set aside the order of the Commissioner and remanded the proceedings to the Commissioner directing a reconsideration of the claim of the petitioner-company. On 1.10.2003, the Commissioner granted a consolidated registration to the petitioner company, but excluding Chaibasa and Sindri. The Company challenged the decision in this Court in WP (T) No. 5945 of 2003 when, according to it, the relevant statutory forms were refused to be issued to the manufacturing unit at Sindri. This Court set aside the order of the Commissioner and directed the Commissioner to re-consider the claim of the petitioner company in the light of the order of the Tribunal which, it was pointed out, was binding on the Commissioner. On 22.12.2003, the Commissioner granted a consolidated registration to the Cement Marketing Division, but refused to include within it the manufacturing units at Sindri and Chaibasa, which had already been registered separately under the Act. The present writ petition has been filed challenging this order of the Commissioner on various grounds, including the ground that the Commissioner had acted illegally in refusing to follow the direction of the Jharkhand Commercial Taxes Tribunal and the further contention that under the Act and the Rules, the consolidated registration sought for by the company was liable to be granted.

3. Originally, the petitioner-company had appointed a sole selling agent, the Cement Marketing Company of India Limited, a subsidiary of the petitioner-company. The agreement with the company was entered into on 1.4.1968 appointing that Company as the Sales Manager of the Associated Cement Company for sale of cement refractories and other products manufactured by the petitioner company for a period of five years. That agreement was to expire by 31.7.1973. But in view of the Companies Amendment Bill, 1972, restricting the right to appoint a sole selling agent in respect of the commodities which were in short supply, it was resolved by the Board of Directors, and it was recommended that the arrangement with the Cement Marketing Company of India Limited be terminated with effect from 1.1.1973 and that the company itself could takeover, with effect from 1.1.1973, all the rights and liabilities and the contractual obligations entered into by the sole selling agent in its capacity as the Sales Manager of the petitioner company and that the petitioner company could deal with the marketing in its Cement Marketing Division, Pursuant to this, the petitioner-company moved the concerned Commissioner at Patna in the erstwhile

State of Bihar and in terms of Rule 3(4) of the Bihar Sales Tax Rules, obtained permission for filing consolidated returns in respect of its cement products within the Patna Circle. What the petitioner-company has sought after the reorganisation of the erstwhile State of Bihar into the States of Bihar and Jharkhand, is to seek the continuance of the arrangement in the State of Jharkhand as well, with Ranchi as the consolidated Circle. The petitioner-company has, of course, already separate registrations for its manufacturing units at Sindri and Chaibasa.

4. Learned counsel for the petitioner contended that the Commissioner of Commercial Taxes has acted illegally in ignoring the direction of the Commercial Taxes Tribunal, which was binding on the Commissioner and going by the findings in the order of remand made by the Tribunal, the combined registration prayed for by the petitioner-company should have been granted. Counsel further pointed out that the commissioner had committed an error in thinking that the Cement Manufacturing Division was a separate entity and not merely a division of the petitioner-company, a dealer under the Finance Act. He further submitted that the fact that the manufacturing units at Sindri and Chaibasa have separate registration u/s 14 of the Act (corresponding to Section 13 of the present Act) did not alter the position that the company was selling its cement products in the State of Jharkhand through separate outlets distributed all over the State as indicated by it and what the company sought for was the registration for sale of cement in a common Circle in terms of Rule 3(4) of the Sales Tax Rules. The fact that the company had such a combined registration in the undivided State of Bihar should have been taken note of, and that position respected by the Commissioner on the reorganisation of the State and the position has not changed in any manner from the time when the combined registration was granted at Patna in the undivided State of Bihar. Learned Advocate General and counsel for the Commercial Taxes Department both tried to argue that the petitioner before us was not a dealer in whose favour separate registration had been granted in respect of the manufacturing units at Sindri and Chaibasa and when dealers are different, there was no question of Rule 3(4) of the Bihar Sales Tax Rules being applied and a combined registration given, especially when separate registrations of the manufacturing units were sought to be retained by the company. Learned Advocate General, in fact, stated that if the petitioner got the separate registration for factories at Sindri and Chaibasa cancelled or withdrawn, the Department could straightaway give a combined registration to the Company in Ranchi Circle. Learned Advocate General further argued that a manufacturer and a dealer cannot be clubbed together u/s 3(4) of the Bihar Sales Tax Rules. It was further submitted on behalf of the respondents that there was nothing in the order of the Commercial Taxes Tribunal, which compelled the Commissioner to grant a combined registration, including within it the manufacturing units at Sindri and Chaibasa and that going by the outlets indicated by the company, the Commissioner has, in obedience to the direction of the Commercial Taxes Tribunal, granted permission to the company in respect of

its outlets, to have its assessment within Ranchi Circle. Therefore, there was no reason to interfere with the order of the Commissioner of Commercial Taxes.

5. On examining the certificate of registration granted to the units of the petitioner company at Sindri and Chaibasa, it is seen that the said certificate also take in cement as a product. The argument is that separate registrations were needed for the manufacturing units because of the need for purchase of raw materials for manufacturing cement and unless there is a registration for, the manufacturing units in that behalf, the business of the manufacture could not be properly carried on. There is merit in that submission. But the only objection raised by the learned Advocate General on behalf of the respondents is that those registrations also take in cement; that the manufacturing units were also entitled to sell cement. The objection here taken is for the sale of cement; a dealer cannot have two separate registrations for two manufacturing units in addition to a combined registration at Ranchi. It is submitted that this will enable the petitioner to avoid tax, a contingency that had to be anticipated by the Department. Learned counsel for the petitioner company, in the light of this argument, submitted that the petitioner company has no objection to ''cement'' being deleted from the certificates of registration issued for the manufacturing units at Sindri and Chaibasa, since the company was selling cement only through the outlets spread all over in different parts of the State and for sale of cement, it is seeking a combined registration. As observed by the Tribunal in his order of remand following the decision of the Patna High Court referred to therein, the granting of a combined registration under Rule 3(4) of the Bihar Sales Tax Rules, does not stand in the way of the authority in exercising powers under the Act in respect of the manufacturing units and other outlets including the power'' available u/s 33 of the Act. We think that in the circumstances, the apprehension expressed by the learned Advocate General on behalf of the respondents could be allayed by directing the Commissioner to delete ''cement'' from the separate registrations granted to the manufacturing units of the petitioner company at Sindri and Chaibasa, thus excluding any possibility of sale of cement at those units. This, we think, would be an adequate protection to the interests of the State.

6. In the context of Annexure-1 and the termination of the sole selling agency of the Cement Marketing Company of India Limited and the creation of a cement marketing division in the company itself, the argument of the Advocate General that the petitioner company is not the dealer who had obtained the registration for the units at Sindri and Chaibasa cannot be accepted. Annexure-1 or the developments that took place pursuant thereto, have not been challenged in the counter-affidavit filed on behalf of the respondents. The petitioner company, the Associated Cement Company Limited is a manufacturer of cement as well as a seller of cement products. There is no reason why the claim of the petitioner that it was selling cement through its different outlets in the State of Jharkhand and not in its factory at Sindri and Chaibasa cannot be accepted, If so accepted, it follows that there cannot also be any valid objection on behalf of the department

in granting permission to file returns at Ranchi regarding its sale of cement as sought for by the petitioner company. More or less, this was the trend of reasoning of the Commercial Taxes Tribunal when it remitted the matter to the Commissioner of Commercial Taxes. We find that the Commissioner of Commercial Taxes had, to some extent, tried to pick holes in the reasoning adopted by the Tribunal and has tried to by pass the direction of the Tribunal. This attitude of the Commissioner cannot be appreciated, especially, since in our prior order we had pointed out that the Commissioner was bound by the order of remand passed by the Commercial Taxes Tribunal and the findings rendered by it.

7. There is also another aspect. Under Sections 84 and 85 of the Bihar Reorganisation Act, 2000, all the Rules, Orders and Forms have been adopted by the State of Jharkhand. There is some force in the submission of learned counsel for the petitioner that the authorities at Jharkhand, after the reorganisation, were bound to respect the combined registration granted to the company in respect of its marketing division at Patna. What was involved was only a shifting of the venue from Patna to Ranchi.

8. In the light of what we have stated above, we allow this writ petition and quash the order of the Commissioner of Commercial Taxes, dated 22.12.2003. We direct the Commissioner of Commercial Taxes to grant a combined registration to the petitioner company in respect of all its units in the State of Jharkhand, including Sindri and Chaibasa in terms of Rule 3(4) of the Bihar Sales Tax Rules. We, direct the Commissioner to delete ''cement'' from the certificates of registration granted to the petitioner company in respect of its Sindri and Chaibasa Units so as to exclude any complication arising out of continuation of such a separate registration for cement.

9. There was complaint that in spite of our specific interim direction and request in that behalf, the forms were not supplied to the petitioner company. An attempt has been made by the Commissioner to defend the non grant of forms. The Commissioner is not entitled to sit in judgment over our interim direction. He/she is bound to implement the direction issued by the High Court. Strictly speaking, we could have taken action against the Commissioner either under the Contempt of Courts Act, or under Article 215 of the Constitution of India, or against the subordinate authorities of the Commercial Taxes Department, but we refrain from doing so, because we are inclined to give the benefit of doubt to the Commissioner and the authorities of the Department and put down their failure to implement the interim order of this Court to their ignorance. Thus, we are not inclined to take any action against the Commissioner and other officers of the Department, as seriously canvassed for by learned counsel for the petitioner. But we direct the Commissioner and the other authorities under the Act, including the authorities in Sindri and Chaibasa, to issue the necessary forms to the petitioner as demanded. After all, the issuance of the forms does not conclude anything and every thing can be considered at the time of completing the assessment.

10. The writ petition is allowed in the above manner. But taking note of the con duct of the Commissioner and the officers of the Department, we direct the respondents to pay the costs of the petitioner, which we quantity at Rs. 5000/- (Rupees five thousand).

