
(1987) 04 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 755 and 1277 of 1986 (R)

Bajrangbali Coke Briquetting Industries and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-04-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14, 15, 16
Constitution of India, 1950 — Article 226, 227, 286

Citation : (1987) PLJR 926 : (1987) 66 STC 128

Hon'ble Judges : N.P. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : G.C. Bharuka, Shankar Lal Agarwal and D.N. Choudhry, in C.W.J.C. Nos. 755 of 1986R and B.P. Rajgharia, in C.W.J.C. No. 1277 of 1986R and Prabhu Dayal Agarwala, for the Appellant; S.K. Chattopadhyaya, Government Pleader I and Shekhar Sinha, Junior Counsel to Government Pleader I in C.W.J.C. No. 755 of 1986(R) and S.B. Gadodia, Standing Counsel and M.S. Mittal, Junior Counsel to Standing Counsel in C.W.J.C. No. 1277 of 1986(R), for the Respondent

Final Decision : Allowed

Judgement

N.P. Singh, J.—These writ applications have been filed on behalf of different petitioners for quashing a communication dated 10th January, 1986, issued by the Deputy Commissioner, Commercial Taxes, Bihar, to the different Assistant Commissioners, Commercial Taxes, to treat briquettes prepared from coal-dust as "unspecified goods" over which sales tax payable was at the rate of 8 per cent.

2. It is the case of the petitioners that they manufacture coke briquettes meant for domestic consumption by mixing coal-dust, soil and molasses by mechanical process. According to the petitioners, as the coke briquettes are prepared from coal-dust, it will be deemed to be declared goods u/s 14(ia) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act") over which sales tax cannot exceed 4 per cent of the sale or purchase price thereof, in view of Section 15(a) of the Act.

3. In the counter-affidavit filed on behalf of the respondent-State, which has been sworn by the Commercial Tax Officer, the assertion made on behalf of the petitioners regarding the ingredients and process of manufacturing of the coke briquettes has not been denied. It has been stated:

The deponent further states and submits that coal briquettes are not coal nor coke as these are manufactured mechanically by mixing coal-dust, soil and molasses.

As such it is not in dispute, in the present writ applications, that the petitioners are manufacturing briquettes by mixing coal-dust with soil and molasses which are being used for domestic use. The controversy is only as to whether such briquettes can be held to be either coal or coke so as to be held to be declared goods within the meaning of Section 14(ia) of the Act.

4. The relevant part of Section 14 of the Act is as follows:

14. Certain goods to be of special importance in inter-State trade or commerce.- It is hereby declared that the following goods are of special importance in inter-State trade or commerce:-

...

(ia) coal, including coke in all its forms, but excluding charcoal:

Provided that during the period commencing on the 23rd day of February, 1967 and ending with the date of commencement of Section 11 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted.

Section 15 prescribes the restrictions and conditions in regard to tax on sales or purchase of declared goods within a State. The relevant part of Section 15 is as follows:

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof and such tax shall not be levied at more than one stage;....

5. Article 286(3) of the Constitution says :

Any law of a State shall, in so far as it imposes, or authorises the imposition of,-

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce ;

...

be subject to such restrictions and conditions in regard to the system of levy,

rates and other incidents of the tax as Parliament may by law specify.

In view of the aforesaid mandate under the Constitution, any law to be made by the State imposing a tax on sale or purchase of goods declared by Parliament to be of special importance, in inter-State trade or commerce, has to be subject to such restrictions and conditions as specified by the Parliament; as for the present by Sections 14 and 15 of the Act. This legal position has not been contested by the respondents. But, according to them, the briquettes prepared by the petitioners are neither coal nor coke in any form but a separate unspecified goods in respect of which the restrictions and conditions imposed by Section 15 of the Act are not applicable.

6. It appears that from time to time controversy has arisen before different courts in connection with restriction imposed by Section 15 of the Act in respect of briquettes prepared from coal-dust along with other ingredients like soil, molasses, etc., as to whether they are coal or coke. In the case of *Indian Carbon Limited Vs. Superintendent of Taxes, Gauhati and Others*, , the Supreme Court had to consider the scope of expression "coal, including coke in all its forms", occurring in Section 14(ia), for the purpose of determination whether it shall include "petroleum coke". In that connection it was observed:

It may be that the clause mentions coal only and then declares that that word shall include coke in all its forms. That shows that the object of the words which follow coal is to extend its meaning. In the writ petition it was stated in para 2 that "coke is the refuse left after destructive distillation of coal, shale-oil and is called petroleum coke, metallurgical coke or pitch coke, to indicate its source or origin; but all these are carbonaceous material used for the same purpose and having same properties, more or less, main being-Mixed carbon, Volatile matters, Ash and Moisture.... At any rate, the language employed is so wide, viz., "coke in all its forms", that petroleum coke which is a form of coke cannot possibly be excluded merely by reference to the word "coal".

In the case of *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, , it was pointed out:

The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute". When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.

7. If the words "coal, including coke in all its forms" have to be given a wide meaning, then any product directly connected with coal or coke has to be held as a product of coal or coke, in whatever form it may be. In the instant case, when the respondents have admitted that the petitioners are preparing briquettes for domestic consumption, by mixing coal-dust with soil and molasses, the briquettes so prepared have direct connection with coal or coke, especially when coal-dust is the main ingredient of the product. Even, in the impugned

communication, the Deputy Commissioner has described the briquettes having been prepared from "coal-dust". It is not in dispute that coal-dust are nothing but particles of coal. Even coke is prepared in different forms from coal after undergoing a process of manufacture. It has been stated in "Chemical Engineers" Handbook", 3rd Edition, at page 1566, which was also noticed by the Supreme Court in the aforesaid case in respect of coke:

Coke is a hard, dense, infusible carbonization residue that ranges from a dull gray-black to a silvery-gray; the latter is characteristic of good quality, high temperature coke. A coke of this type makes a ringing sound when dropped or struck with a hard object. It exhibits a porous cellular structure, which primarily depends upon the kind of coal used and the rate of heating during the carbonization process.

Encyclopaedia Britannica, Vol. 6 (1973 Edition, page 35) describes coke as follows:

Coke is a hard, cellular mass of carbonaceous material. Coke is essentially a partially graphitized and cellular form of carbon. Coke is solid residue that remains after certain types of bituminous coals are heated to a high temperature out of contact with air until substantially all of the volatile constituents of the coal have been driven off. The residue consists principally of carbon....

8. In the case of K. C. Industries, Moradabad v. Assistant Commissioner, Sales Tax 1978 Tax LR 2129, a Bench of the Allahabad High Court considered the question with which we are concerned in respect of coke briquettes "manufactured by mechanically pressing the mixture of coal-dust, multani mitti and molasses" and came to the following conclusion :

The allegation that coke briquettes are meant for domestic kitchen consumption is not denied in the counter-affidavit. The coke therefore manufactured by mechanical pressing is used for the same purpose as coke. The contents of coke briquettes, namely, moisture, volatile matters, ash and carbon are the same as in any other coke. The mere change in shape by mechanical pressing does not change the commodity. It remains the same. In Webster's Third New International Dictionary "form" has been defined as, "the shape and structure of something as distinguished from the material of which it is composed". Mere change of shape or structure in the raw material does not result in production of a new commodity. And even if it is so the entry is wide enough to cover in its fold commodities which remain the same despite change in shape. Coke briquettes thus being only a preparation of coke dust are covered by the expression "coke in all its forms".

9. Again; the Madras High Court in the case of Deputy Commissioner of Commercial Taxes v. Kuppaswami Chetty [1980] 45 STC 308 considered a product known as "leco briquette" and pointed out that the process which goes to the manufacture or making of lignite briquette was the same as employed for the purpose of obtaining coke and as such the product was covered by Section

14(ia), i. e., a form of coke. The Madhya Pradesh High Court, in the case of Commissioner of Sales Tax v. Punjab Coal & Kutti Farm [1981] 47 STC 351, considered whether "nalidar coal" should be deemed to be coal. It was pointed out in that connection that as "nalidar coal" was made of coal-dust mixed with some earth and water and used as a fuel it has to be treated as coal. I may, however, point out that in this case reference was made to the judgment of the Supreme Court in the case of Commissioner of Sales Tax v. Jaswant Singh Charan Singh 1967 19 STC 469 where even charcoal was included in the term "coal" for purposes of determining the rate of sales tax. However, later, by amendment, charcoal has been excluded from Section 14(ia) of the Act.

10. In the case of Haryana Briquettes Industries v. State of Haryana [1987] 64 STC 330, a Bench of the Punjab and Haryana High Court considered whether "coal briquettes" are included in Section 14(ia) of the Act. After pointing out that as coal briquettes were manufactured by mixing coal-dust with molasses and are used for domestic kitchen consumption, it was held that they are covered by the definition as given in item (ia) of Section 14 of the Act.

11. Giving the meaning of coal in the popular sense a Bench of the Allahabad High Court, in the case of D. C. Development Federation Ltd. v. Commissioner, Sales Tax [1970] 26 STC 464, held that coal-dust is coal as it has the same combustible property as coal and used for similar purpose. Similarly, in the case of Binod Mills Co. Ltd. v. Commissioner of Sales Tax, M. P. [1972] 29 STC 413, the view that coal ash is a coal was expressed.

12. The learned standing counsel resisting the claim of the petitioners urged that unless it is found that the briquettes prepared by the petitioners are either coal or coke in some form, it has to be held as goods not covered by Section 14(ia) of the Act so as to attract the restrictions imposed by Section 15 of the Act. He pointed out that by mixing different materials and minerals, during process of manufacture, an entirely new and separately identifiable product may come into existence. That product need not be held, necessarily as a part of one of the constituents used, as in this case coal-dust. In support of his contention reference was made to the judgment of the Supreme Court in the case of Hindustan Aluminium Corporation Ltd. v. State of U. P. [1981] 48 STC 411. In that case, the Supreme Court was construing an entry "all kinds of minerals, ores, metals and alloys including sheets and circles used in the manufacture of brasswares and scraps...." In that connection it was pointed out that the expression "including" does not enlarge the meaning of the word "metal" and must be understood in a conjunctive sense as a substitute for "and". It was held that aluminium rolled products were distinct commercial items from aluminium ingots and billets. In my view, when the Supreme Court itself has interpreted the expression "coal, including coke in all its forms", occurring in Section 14(ia) of the Act, in the case of Indian Carbon Limited Vs. Superintendent of Taxes, Gauhati and Others, and observed "that the object of the words which follow coal is to extend its meaning", it is not possible for this Court to give a restricted

meaning to the expressions aforesaid and to hold that articles or products which are not coal or coke in its strict terms, shall not be included u/s 14(ia) or they should be held to be a separate distinct product although the main constituent being either coal or coke in some form or the other.

13. Reference was made on behalf of the State to the judgment of the Supreme Court in the case of Hajee Abdul Shukoor and Co. v. State of Madras [1964] 15 STC 719 where a question had arisen as to whether dressed or tanned hides and skins should be treated as one class of goods for the purpose of taxation or as two different classes of goods. It was held that if the statute treats both these kinds of hides and skins as different commodities then the provisions providing for levy of tax on raw hides and skins at different point even in the absence of any provision for the taxation of dressed hides and skins cannot be held to be discriminatory and invalid. The aforesaid judgment is not of much help to the State because in the concerned statute the hides and skins had been treated as different commodities.

14. Reliance was also placed by the respondents on the case of Healthways Dairy Products Company Vs. The Union of India (UOI) and Others, where a controversy had arisen whether the expression "condensed milk" in the notification shall also include "condensed skimmed milk" and it was held that "condensed skimmed milk" shall not be included in the "condensed milk". As the Schedule which was under consideration in the aforesaid case had simply mentioned "condensed milk", the Supreme Court held that it cannot include "condensed skimmed milk". In the instant case, when the framers of the Act have not only said coal including coke but have added further "in all its forms", then any product which can be held to be a form of coke has to be included u/s 14(ia).

15. The standing counsel then referred to the judgment of the Supreme Court in the case of State of Tamil Nadu v. Pyare Lal Malhotra [1976] 37 STC 319. The Supreme Court considered the scope of expression "iron and steel" given in Section 14(iv) of the Act. After pointing out that as the aforesaid clause after having mentioned "iron and steel" uses the expression "that is to say" and gives a list of different categories of iron and steel products like pig iron and cast iron including ingot, etc., it was held that each of the categories falling under "iron and steel" constitutes a new species of commercial commodity. The interpretation given to the expression "iron and steel" in Section 14(iv) cannot be applied to Section 14(ia) of the Act because in Section 14(iv) after mentioning "iron and steel" the framers of the Act added the expression "that is to say" and specified the different products. In that background, each of the products mentioned were held to be new species of commercial commodities for purposes of sales tax. Here all forms of coke have been included u/s 14(ia) and they have not been specified as separate products.

16. It was then submitted on behalf of the respondents that as in the case of Kundori Labour Co-operative Society Ltd. and Vs. State of Bihar and Others, , a Full Bench of this Court has held that slurry is not coal and thereafter a Bench of

this Court in the case of *Waste Products Reclaimer P. Ltd. v. Coal Controller* 1986 BLT 177 has held that briquettes prepared out of slurry are not coal, it should be held that briquettes prepared even from the coal-dust are neither coal nor coke. From a bare reference to the aforesaid Full Bench judgment it shall appear that this Court first ascertained on the materials on record as to what was commonly known as slurry. In that connection it was pointed out that "in the earlier decades slurry had been allowed to go waste and was a pollutant which had to be painstakingly thrown in the rivers or stream in order to be washed away.... Slurry is consequently a residual or a waste product or at the highest a by-product of this chemical process which having been passed through the slurry ponds in the washery premises itself is designedly thrown or discharged in the Bokaro River.... Therefore, the residuary rejects of the process of washing coal cannot be equated with coal itself. Slurry and sludge, therefore, cannot be raised to the pedestal of being coal itself for the processing of which they are the consequential wastes. It, thus, seems plain that the true nature of slurry is that it is a residue, reject or waste of an industrial process consisting of mud; ash, oily substances, water and carbonaceous ingredients. Therefore, intrinsically to label this industrial effluent as coal itself would, indeed, be farfetched, if not absurd". Any decision in respect of slurry after having found it to be a residue, reject or waste of an industrial process consisting of mud, ash, oily substances, water and carbonaceous ingredients has no bearing to the present controversy because, in the instant case, it is an admitted position that the coal-dust is the main ingredient/constituent of the briquettes prepared by the petitioners. Even if briquettes are being prepared, out of slurry for the domestic use, that may not be held to be covered by Section 14(ia) because it is neither coal nor any form of coke, but once the briquettes prepared by the petitioners are held to be a form of coke then they are entitled to the protection of Section 16 of the Act.

17. An objection was also taken on behalf of the State regarding the maintainability of the present writ applications on the ground that the petitioners should take this objection before the Sales Tax Officers at the time of passing of the assessment orders, instead of invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution. It is well-known that normally this Court does not entertain a writ application against a grievance that an assessee is likely to be taxed by giving wrong interpretation of some entry in the relevant statute; that objection has to be heard initially by the taxing officer and then to be examined by the appellate authorities. At a later stage, in accordance with the provisions of the statute or under Article 226 of the Constitution, this Court can examine if any entry or provisions of the taxing statute has been wrongly applied. But, in the instant case, as the Deputy Commissioner has issued a direction to all officers concerned directing them to treat the briquettes prepared from the coal-dust as unspecified goods and to levy tax at the rate of 8 per cent, the apprehensions of the petitioners are justified that the taxing officers are not going to apply their independent mind on the question aforesaid. It may be pointed out that the said decision had been taken at the level of the

State Government which is apparent from the impugned communication [annexure 1 in C. W. J. C. No. 755 of 1986(R) as well as annexure 2 in C. W. J. C. No. 1277 of 1986(R)] where the Deputy Commissioners have specifically mentioned that the State Government has taken the decision that coal briquettes should be treated as unspecified goods. Apart from that after having admitted these writ applications and having heard the counsel for the parties, at length, in my view, it will not be proper for this Court to dismiss the writ applications without expressing its opinion on the nature of the product when it is an admitted position that the petitioners are preparing briquettes by mixing coal-dust with soil and molasses. In the case of *Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another*, , the persons aggrieved filed writ petition against the order of the Commissioner before the High Court which was dismissed by the High Court saying that correctness of the impugned order should be considered by the appellate authorities under the provisions of the M. P. General Sales Tax Act and if the petitioners of the writ application were aggrieved by the decision of the appellate authorities, a reference u/s 44 of the said Act could be made to the High Court. The Supreme Court observed that High Court should have examined the merit of the case instead of dismissing the writ petition in limine. It was said "although technically it would have been open to the appellants to urge their contentions before the appellate authority, namely, the Appellate Assistant Commissioner, that would be a mere exercise in futility when a superior officer, namely, the Commissioner, has already passed a well-considered order in the exercise of his statutory jurisdiction".

18. In the instant case, although the impugned order does not appear to have been passed by the State Government in exercise of any statutory power but, in view of the decision having been taken by the State Government and communicated to different authorities, it will be a futile exercise on the part of the petitioners to agitate the question from one forum to another. As such I am not inclined to dismiss the writ applications on this ground: A similar view was expressed by this Court in the case of *Ashok Industries v. State of Bihar* 1979 BBCJ (HC) 465.

19. On behalf of the petitioners it was also urged that if the briquettes prepared by them are held to be coal briquettes, or coke briquettes, in view of Section 15(a), tax should not be levied at more than one stage. It was pointed out that the respondents are not entitled to realise sales tax, even at the rate not exceeding 4 per cent, from the petitioners who are manufacturing the briquettes, if sales tax has already been paid over the coal or coal-dust from which coke briquettes are being prepared. There is no occasion to decide this question in the present writ applications. In the present writ applications, we are concerned only with the question whether the coke briquettes prepared by the petitioners shall be deemed to be a form of coke, over which the sales tax in the State of Bihar cannot exceed 4 per cent, in view of Section 14(ia) read with Section 15(a) of the Act and as to whether a decision taken by the State Government in respect

thereof and communicated to the different authorities should be quashed. The question whether the petitioners are not liable to pay sales tax at all because that will amount to levying tax at more than one stage has to be decided by the taxing officers on the materials produced by the petitioners during the course of the assessment proceeding. It cannot be disputed that the aforesaid question has to be determined with reference to the facts of each case.

20. In the result, these two writ applications are allowed and the communication issued by the Deputy Commissioner, Commercial Taxes, on the basis of the decision taken by the State Government that briquettes prepared from the coal-dust be treated as unspecified goods, is quashed. The assessment order passed in the case [C. W. J. C. No. 1277 of 1986(R)] which is based on direction of the Deputy Commissioner aforesaid is also quashed. I direct that coke briquettes prepared by mixing coal-dust, soil and molasses, as in the present case, should be treated as goods specified in the entry 14(ia), being a form of coke, during the assessment proceedings. In the circumstances of the case, the parties shall bear their own costs.

B.P. Singh, J.

21. I agree.