

(2003) 09 JH CK 0070

In the Jharkhand High Court

Case No : Writ Petition (T) No's. 189 and 193 of 2003

Bharat Coal Product

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-09-2003

Acts Referred:

Bihar Finance Act, 1981 — Section 16(4)
Central Sales Tax Act, 1956 — Section 3, 6
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 184 : (2006) 146 STC 102

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Binod Poddar and Ajay Poddar, for the Appellant; K.K. Jhujhunwala, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—WP (T) 189 of 2003 relates to the assessment year 1998-99 under the Bihar Finance Act and WP (T) No. 193 of 2003 relates the assessment year 1997-98. The writ petitions are filed to quash the orders of assessment for the respective years under the Central Sales Tax Act and under the Bihar Finance Act. The facts relating to the two assessment years are more or less identical and hence need not be repeated.

2. The petitioner, the assessee, filed quarterly returns under the Bihar Sales Tax Rules, 1976. In those quarterly returns, the petitioner showed its gross turn over as inter-state sales and paid the tax accordingly. After the period prescribed by Section 16(4) of the Bihar Finance Act for filing revised returns had expired, the assessee made applications on 1.3.2002, copies of which are annexed as Annexure 1 series to these writ petitions, along with what it called revised returns. As against the original stand taken in the returns that the sales were inter- state sales, the stand attempted to be adopted in (sic) and the revised returns attempted to be filed was that the sales were intra-state sales. No

material as such was produced along with the returns and the statements to support the claim that the sales were intra-state sales. What was done was to place reliance on a decision of the Patna High Court in *Luxmi Hardcoke Manufacturing Company v. The State of Bihar* 1999 (1) PLJR 713. It was contended that going by the ratio of that decision, the sales effected by the assessee had to be considered to be intra-state sales and were not, in fact, the inter-state sales. The assessing authority took the view that the stand adopted by the assessee when he filed returns was acceptable and that the attempt (sic) was belated and the revised returns could not be entertained in terms of the Act. The assessing authority also took the view as no material was produced to show that the sales were not in fact the inter-state sales as originally set out by the assessee himself. The assessing authority therefore accepted the returns filed by the assessee and completed the assessment.

3. The assessee did not invoke the alternative remedy by way of appeal available to it. Nor did it invoke the revisional jurisdiction which it could have invoked. Instead, the assessee has filed these writ petitions on 10.1.2003, some eight months after the passing of the orders of assessment, challenging the said orders on the ground that the orders were against the ratio of the decision in *Luxmi Hardcoke Manufacturing Company v. The State of Bihar*. Admittedly, the assessee filed quarterly returns by adopting the position that its sales were the inter-state sales. No doubt, filing of returns or adopting a stand by the assessee in that return might not estop the assessee from establishing that as a matter of fact, the sales were not interstate sales. But then, the burden would be on the assessee to show that the stand originally adopted by it in its return was on a mistaken basis or was the result of a mistake on facts or in law. For that, the assessee had to produce adequate materials before the assessing authority. Here, except the pleading that after the rendering of the decision of the Patna High Court in *Luxmi Hardcoke Manufacturing Company* case, the assessee had realised that it had been mistaken in its understanding of the law; nothing else was put forward by the assessee as a circumstance showing that the original return was in any manner erroneous or the original position adopted by the assessee was in any manner unsustainable.

4. Here, the authority under the Act was not in a position to accept the revised return of the assessee. u/s 16(4) of the Bihar Finance Act, if a dealer having furnished a return discovered any omission or wrong statement in that return, he may furnish a revised return in the prescribed manner to the prescribed authority at any time by 31st July of the year following the accounting year. Here, therefore, the revised return, if at all, had to be filed by 31.7.2000 relating to the assessment year 1998-99 and 31.7.1999 relating to the assessment year 1997-98. The revised returns were admittedly filed only on 1.3.2002, well beyond the time prescribed in that behalf by Section 16 of the Bihar Finance Act. There was no provision under which the authority could extend the time for filing a revised return or condone the delay in filing the revised return. In fact, before us, learned counsel for the assessee argued that the revised returns were not

under the Bihar Finance Act, but were filed on the basis that amounts paid by the assessee towards tax were paid under a mistake of law and the assessee was entitled to get refund of the same. Therefore, the position was that the assessing authority could not entertain the revised returns. The necessarily resulted in the assessing authority having to proceed on the basis of the returns filed by the assessee and complete the assessment and hence there was no need to make any further enquiry into the matter. Once the assessing authority is held to have no right to entertain a revised return, obviously, there was no material other than the returns filed by the assessee on the basis of which alone the assessing authority could proceed. Tested from this angle, the position adopted by the assessing authority is fully correct and could not be held to be either illegal, without Jurisdiction or even erroneous.

5. When the decision in Luxmi Hardcoke was taken up in appeal to the Supreme Court, Supreme Court dismissed the appeal, but observed, "this is a matter that must be decided squarely on facts and in the absence of facts, we will not venture to reach a decision." No doubt, a series of decisions have dealt with the question and most of them have been referred to in Luxmi Hardcoke Manufacturing Company case by the Division Bench of the Patna High Court. But what emerges from this decision and from the observations of the Supreme Court while dismissing the appeal from the decision of the Patna High Court, is that the question whether a particular sale was inter-state or intra-state sale had to be decided on the facts of the case. Here, once we exclude the revised returns filed by the assessee which the assessee was bound to do within the time fixed by Section 16(4) of the Bihar Finance Act, the only factual material available before the assessing authority was the return filed by the assessee and the claim made by the assessee that the sales were inter-state sales. Therefore, by merely relying on the ratio of the decision in Luxmi Hardcoke Manufacturing Company v. The State of Bihar, the assessee could not establish that the sales in question or the transactions of sale entered into by it, were intra-state sales and not inter-state sales.

6. The contention of the learned counsel for the assessee that the order of assessment based on the returns filed by the assessee is without jurisdiction or non est in the eye of law, cannot be accepted. The assessing authority had the jurisdiction to treat the sale either as inter-state sale or as Intra-state sale depending on the evidence before it. The finding arrived at by the assessing authority in that behalf cannot be said to be one without jurisdiction or one beyond the jurisdiction of the assessing authority. There is also no rule or principle which precludes the assessing authority from accepting the returns filed by an assessee and accepting the stand adopted by an assessee relating to a particular transaction or series of transactions it had entered into. No doubt, if the assessing authority was not satisfied with the position adopted by the assessee. It was entitled to make an investigation and come to its own finding on that aspect. But, that will depend on the assessing authority being satisfied with the returns filed by the assessee and the stand adopted by it, or not. Therefore,

it cannot be contended that even when the assessing authority was satisfied that the stand adopted by the assessee could be accepted regarding a particular transaction and the assessment completed, the assessing authority was bound to go into an inquiry whether that particular transactions was an inter-state sale or an intra-state sale. Since the decision of the assessing authority in this case is well within its jurisdiction, it cannot be interfered with under- Article 226 of the Constitution of India on the ground that it suffers from jurisdictional error of law apparent on the face of the record.

7. In the original return filed by the assessee, the assessee had proceeded on the basis that sales tax had been realized on the transactions of sale, but the stand adopted in the writ petition by the assessee is that no sales tax had been collected by the assessee. In the face of the returns filed by the assessee, how far this stand sought to be adopted by the assessee can be accepted is yet another question. But in the case on hand, in our view, it is not necessary to go into that question since we find that the assessing authority was justified in proceeding to complete the assessment on the basis of the returns filed by the assessee and in the absence of any other clinching or compelling materials leading to a different conclusion. On an examination of the various decisions brought to our notice by learned counsel for the assessee, what we find is that the question whether a particular sale transaction is inter-state or intra-state sale would depend upon the facts that are established before the assessing authority. As observed by the Supreme Court in its judgment in appeal against the decision in Luxmi Hardcoke Manufacturing Company, the question had to be decided on the facts of the case. Unless a finding of fact rendered by the assessing authority is so perverse or unreasonable that no authority trained in law could have come to such a conclusion, this Court cannot interfere. Of course, the Court can interfere if this Court comes to the conclusion that the finding was based on irrelevant or inadmissible materials or that while arriving at the finding, relevant materials produced have been left out of consideration. We find that none of these contingencies has occurred in this case. Mere reliance on the decision of the Patna High Court by itself cannot alter the position or demonstrate before us that the procedure adopted by the assessing authority and the finding rendered by it are unsustainable, viewed from the angle of exercise of jurisdiction under Article 226 of the Constitution of India.

8. Thus, on an anxious consideration of the relevant aspects, we are satisfied that these writ petitions do not deserve to succeed. Hence, they are dismissed.