(2003) 03 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2758 of 2002

Bihar Gases Ltd. APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 28-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 3 JCR 92

Hon'ble Judges : P.K. Balasubramanyan, C.J;Gurusharan Sharma, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Ajit Kumar, for the Appellant; B.S. Lal, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyam, C.J.—The petitioner herein, is an assessee under the Bihar Sales Tax Act. For the assessment year 1991-92, the petitioner was assessed to sales tax under that Act. During the assessment, the petitioner claimed that sum of Rs. 3,62,106.49 p. covered by sale of industrial gas to small scale industrial units for use in manufacture of steel and covered ''G'' forms issued by those units, was liable to be excluded while determining the turn over of the assessee. The assessee claimed the benefit of SO No. 791 dated 10.9.1987 which exempted from levy of sales tax or purchase tax, sale of raw materials (whether processed or unprocessed) to the owner of a newly set up industrial unit in large, medium and tiny sector which is approved and registered by the Industrial Department of the Government of Bihar or a competent authority. According to the assessee, the ethane gas or the industrial gas supplied by it to such small scale units were used by such units in the process of manufacture of steel and hence it is to be treated as raw material within the meaning of S.O. No. 791 and hence the turnover in that regard was liable to be exempted. The assessing authority took the view that the industrial gas sold by the assessee was not raw material used for production or manufacture of steel by small scale industrial units and hence the turn over concerned could not be exempted. The assessee, the petitioner, filed an appeal. It was argued on behalf of the assessee that since the industrial gas sold was being used for cutting steel which is manufactured by the small scale industrial units, the same had to be treated as raw material and the turnover thereon to be exempted, once the assessee produced the requisite ''C'' form obtained from the concerned industrial unit. The appellate authority took the view that the industrial gas supplied by the assessee and used by the industrial units for cutting steel, it manufactured, could not be treated as raw material within the meaning of the Notification and hence the assessing authority was right in rejecting the claim of the assessee. Being aggrieved by that decision, the assessee filed a revision before the Jharkhand Commercial Taxes Tribunal. That Tribunal held that the industrial gas supplied by the assessee could not be treated as a raw material for the manufacture of steel by the industries to which they were sold and consequently, the appellate authority was justified in including the turnover thereon in the assessable turnover. Thus, the revision was dismissed. It is challenging the assessment thus completed that the petitioner has filed this writ petition.

2. Learned counsel for the petitioner-Assessee placed considerable reliance on the decision of the Supreme Court in Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., . Therein, the question that arose was whether sodium sulphate used in the manufacture of paper was used as a raw material and whether it was entitled exemption as such. The Supreme Court referred to the decision In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer 16 STC 563 which held that manufacture of goods should normally encompass the entire process carried on by the dealer of converting raw material into finished goods and the decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, to the effect that consumption must be in the manufacture as raw material or of other components which go into the making of the end product and held that since sodium sulphate was essential for the manufacture of paper and went into its manufacture, it must be treated as raw material even though it was used up even at the first stage of the manufacture and did not survive for user at the final stage of the manufacture. In that decision the Supreme Court discussed the meaning of the expression ''raw material'' and ultimately stated that in the infinite variety of ways in which these problems present themselves, it was neither necessary nor wise to enunciate the principles of any general validity intended to cover all cases. The mater must rest upon the facts of each case. According to counsel for the assessee, since industrial gas was being used for cutting steel in the process of manufacture of steel from raw materials, industrial gas also be treated as raw material. Counsel emphasized that the exemption was refused essentially on the finding that industrial gas was only used in the manufacture and it did not transform itself into the finished product, a reasoning, that cannot stand in the light of the decision of the Supreme Court above referred to and the orders require to be quashed and the matter at least to be

sent down for reconsideration.

3. Learned counsel for the Revenue, on the other hand, submitted that the argument before the authority was that industrial gas was being used for cutting steel manufactured by the small scale Industrial units and going by that argument, it was clear that industrial gas was not a raw material coming within the purview of the Notification. Counsel further submitted that industrial gas was not a "material used to create the product and the decision relied on was clearly distinguishable. Counsel pointed out that sodium sulphate involved in that case was normally used for manufacturing paper, the end product, though the user was at the first stage and not at the second stage. Hence industrial gas was never used for the manufacture of steel from raw materials and it was used only to cut the end product manufactured by the industrial unit, the purchaser and hence, the orders do not suffer from any error apparent on the face of the record justifying interference by this Court.

4. On an anxious consideration of the decision of the Supreme Court relied on by the learned counsel for the petitioners, we find that the question whether a particular product was a raw material depended on the facts of that case and though the stage of its user during the process of manufacture may not be relevant, the fact that it is an essential ingredient for the manufacture was relevant. Here, what we find is that industrial gas is not necessary for manufacturing steel from the raw materials used therefor. It is used for cutting the manufactured steel into size or convenient shape. It cannot be said that thereby the industrial gas supplied by the petitioner would become a raw material for manufacturing steel. Counsel for the assessee did not argue that manufacture would include the preparation of the steel for the market by cutting it Into proper size and shape. Since it is not an ingredient going into the manufacture of steel by small scale industrial units, in our view, the authorities must be taken to have come to the correct conclusion in refusing the exemption sought for by the assessee. In any event, we are satisfied that the orders challenged do not suffer from any error apparent on the face of the record justifying our interference in exercise of our jurisdiction under Articles 226 and 227 of the Constitution of India.

5. Hence, we dismiss the writ petition.

Gurusharan Sharma, J.

6. I agree.

