
(1995) 04 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. ... of 1995 Arising out of SLP (C) No. 11497 of 1988

Bihar State Pollution Control Board

APPELLANT

Vs

Tata Engineering and Locomotive Co. Ltd.

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Water (Prevention and Control of Pollution) Act, 1974 — Section 5

Citation : (1998) 8 SCC 720

Hon'ble Judges : R. M. Sahai, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The question that arises for consideration is whether the respondent carrying on business of manufacturing, assembling, sealing, altering etc. of locomotives, holders, engines etc. at its company at Bihar was covered in the expression "metallurgical industry" in Schedule I under Water Cess Act, 1977 ('Act' for short).

3. The respondent's claim, in reply to the notice issued by the appellant u/s 5 of the Water (Prevention and Control of Pollution Cess Act, 1977, was that it was an engineering industry and such an industry being not mentioned in the Schedule the provisions of the Act were not attracted and the notice was illegal. The High Court accepted the claim after an elaborate discussion about the meaning of the words "metallurgical industry". The distinction drawn by the High Court between engineering and metallurgical industry has been accepted by the Union of India as the Schedule has now been amended and the engineering industry stands included in the Schedule. But the dispute about the period in dispute still survives. In Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, this Court while construing this very Schedule held that it was a fiscal statute and was liable

to be construed strictly to find out whether the liability could be fastened on any industry. It further held:

"Where the question is whether a particular industry is an industry as covered in Schedule I of the Act, it has to be judged normally by what that industry produces mainly. Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business."

The test of predominant purpose was not found to be established even by the assessing or appellate authority.

4. Reliance was placed by the appellant on Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, and it was urged that the word 'industry' should be construed in a wider sense. It is not necessary to deal with this decision in view of a specific decision on construction of this very Schedule of this Act, with which we respectfully agree. The High Court, therefore, did not commit any error in quashing the notice.

5. In the result, the appeal fails and is dismissed. But there shall be no order as to costs.