
(2003) 09 JH CK 0032

In the Jharkhand High Court

Case No : CWJC No"s. 2957, 2974, 2977, 2991, 2992, 2993, 3008, 3011, 3037 and 3038 of 1998 (R)

Central Coal Fields Ltd. and Bharat Coking Coal Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Bihar Electricity Duty Act, 1948 — Section 3A, 4(4)
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 599

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

Bench : Division Bench

Advocate : Binod Poddar and Darshana Poddar Mishra, R.N. Sahay, for the Appellant; R.S. Mazumdar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—In these write petitions, filed by Central Coalfields Limited (CCL) and Bharat Coking Coal Limited (BCCL); common questions are raised and therefore they are taken up together. The petitioners pray for a declaration that they are not liable to pay surcharge payable in terms of Section 3-A of the Bihar Electricity Duty Act, 1984 (the Act for short), and for refund of the surcharge paid by them.

2. It was contended on behalf of the petitioners that after the pronouncement of the judgment in the case of Bihar Alloy Steels Limited and Anr. v. State of Bihar and Ors., reported in 1996 (1) PLJR 824; the petitioners realized that they have been paying the surcharge by mistake and therefore, they are entitled to a declaration that they are not liable to pay surcharge and also that they are entitled to refund of the amounts, paid as surcharge.

3. Broadly stated, the liability to pay surcharge u/s 3-A of the Act inter alia arises, when a person becomes liable to pay duty-on generation and consumption of electricity as per Section 4 (4), and on sale and consumption as

per Section 4 (4-a) of the Act.

4. We will first consider whether the judgment in Bihar Alloys case is applicable to the petitioners or not. In that case, this Court found that the company was generating electricity in a very negligible quantity, namely, 1330 units as against 8,74,000 units purchased from Damodar Valley Corporation in a given month. It was therefore held that the electricity was not meant either for consumption or for sale. In that position, it was held that the company was not liable to pay duty u/s 4 (4) of the Act. Regarding the liability to pay duty on sale of electricity u/s 4 (4-A) of the Act, it was held that the company was not selling electricity to its employees, as certain amount of energy was provided free of cost to them and beyond that, 25 paise per unit was charged as electrical maintenance charge. Based on these findings, it was held that the company was not liable to pay surcharge.

5. Here the case of the department is that CCL used to sell electricity to its employees, hospital, offices, telephone exchange, post office, for water supply and Kargali Bazar, and therefore the company is liable to pay surcharge.

6. Learned counsel for the petitioners denied and disputed the contention of the department by saying that the same charges were realised against the supply of electricity which were to be paid to DVC by CCL. and as such there is no sale of electricity. Counsel for the respondent, in reply submitted that element of profit is not necessary in a sale.

7. Regarding Bharat Coking Coal Limited, the admitted case is that some of the units of the Company have their own Captive Generating Plants, where electricity is generated for own use and for the use of its employees.

8. In view of the aforesaid position, we find that the Bihar Alloys case is of no help to the petitioners CCL and BCCL and they have to prove their own case before the competent authorities in support of their claim. Moreover, this Court cannot make a declaration, as sought for the petitioners in this case under the writ jurisdiction, where there are disputes on facts, as noticed above.

9. The respondents further contended that the duty and surcharge are attracted on consumption/sale/generation. As per Section 3-A of the Act if a person is liable to pay duty on generation u/s 4 (4) and on sale u/s 4 (4-a) then he is also liable to pay surcharge. The petitioners having admitted their liability to pay duty, they cannot escape the liability to pay surcharge.

Petitioners' units got themselves registered under the Act, have been filing returns, paying the duty, and the surcharge. During the assessment proceedings, liability to pay surcharge was not denied.

CCL made a purported representation for refund of the amount paid as surcharge between 1985-95 on 8.7.1998, based on the said decision in Bihar Alloys case. Admittedly, refund was not prayed for under the provisions of the Act/Rules. However; the prayer for refund was rejected by the Deputy Commissioner of

Commercial Taxes by order dated 31.8.1998 (Annexure-2).

BCCL filed revised returns on the basis of the said judgment in Bihar Alloys case. Appeals against the assessment were dismissed on the ground that Bihar Alloys case is not applicable. Revisions against those orders are said to be pending; However, BCCL moved this Court by filing the present cases for the declaration, sought for.

10. Learned counsel for the petitioners, argued that, although it was for the DVC to recover the duty from the petitioners and pay the same to the State Government, in view of Clause 17 of the Bulk Supply Agreement between the DVC and the petitioners, the petitioners have been paying electricity duty directly to the State Government as an agent of DVC and the payment thus made cannot be treated as admission of liability by the petitioners to pay electricity duty.

11. We find that Clause 17 of the agreement only provides that any levy, such as Sales Tax. Electricity Duty etc. in respect of energy generated by the DVC and/or purchased by the consumers from DVC shall be paid by the consumer. We do not see anything in Clause 17 providing for payment of electricity duty by the petitioners directly to the State Government, on behalf of the licensee (DVC) as an agent.

12. The claim of the petitioners for refund is also not sustainable in view of the position, noticed above. Moreover the Constitution Bench of Hon"ble Supreme Court in a case, reported in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, has held in paragraph 108 (iv) as follows :--

"It is also not open to any person to make a refund claim on the basis of a decision of a Court or tribunal rendered in the case of another person. He cannot also claim that the decision of the Court/tribunal in another person's case has led him to discover the mistake of law under which he has paid the tax nor can he claim that he is entitled to prefer a writ petition or to institute a suit within three years of such alleged discovery of mistake of law. A person, whether a manufacturer or importer, must fight his own battle and must succeed or fail in such proceedings. Once the assessment or levy has become final in his case, he cannot seek to reopen it nor can he claim refund without reopening such assessment/order on the ground of a decision in another person's case. Any proposition to the contrary not only results in substantial prejudice to public interest but is offensive to several well-established principles of law. It also leads to grave public mischief. Section 72 of the Contract Act, or for that matter Section 17(1)(c) of the Limitation Act, 1963, has no application to such a claim for refund."

13. Thus, the petitioners are not entitled to the reliefs as sought for by them, unless they establish their own claims before the competent authorities first.

14. With these observations the writ petitions are dismissed. There will be no order as to costs.

P.K. Balasubramanyan, C.J.

15. I agree.