

(1999) 08 PAT CK 0090

In the Patna High Court

Case No : C.W.J.C. No's. 403, 880, 993 and 1797 of 1999 (R)

Chandama Coal Products,

APPELLANT

Vs

State of Bihar and Others Etc.

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 12, 14, 15, 2, 3
Constitution of India, 1950 — Article 286

Citation : (1999) 3 BLJR 2087 : (1999) 3 PLJR 706

Hon'ble Judges : S.J. Mukhopadhaya, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In all these four writ petitions, the petitioners have prayed for quashing the Notification No. S.O. 3 dated 3rd January, 1998, whereby it fixes rate of Sales-tax @ 8% for the sale and purchase of "slurry and sludge". A copy of the said notification has been annexed as Annexure 4 to the writ petition. Since a common question of law is involved in all these writ petitions, therefore, all these writ petitions are disposed of by this common judgment.

2. The petitioners have been registered under the Bihar Finance Act, 1981 as also under the Central Sales Tax Act, 1956. Some of the petitioners are also registered as Small-Scale Industrial Units by the Director of Industries, Government of Bihar for manufacturing of slurry briquette. The petitioners purchased coal slurry from the respondent-Central Coalfield Ltd. for the purpose of manufacturing coal briquette and other items. It is contended that u/s 15 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"), the tax payable under the State law in respect of any sale or purchase of declared goods inside the State shall not exceed 4% of the sale or purchase price thereof and such tax shall not be levied at more than one stage. The State Government, in exercise of power u/s 12 of the Bihar Finance Act, 1981 (hereinafter referred to as "the State Act"), vide Notification No. Bikrikar/San/1026/77-14545 dated

26-12-77, fixed the rate of sales tax as 4% on the item "coal, including coke in all its forms but excluding charcoal". The petitioners' further case is that the nature and characteristic of the slurry is that coal is found in seams mixed with mud and other impurities. After its extraction from the mines, it is crushed into different sizes, thereafter it is washed in the Washeries of the coal mines for removing its impurities for purposes of making it fit for use for metallurgical purposes. In the Washery Plant, coal is washed with the medium of water mixed with pine oil and sand through mechanical process. In the process of washing, large quantity of water is discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water small particles of coal are carried away to the pond where the coal particles settle down on the surface of the pond and the same is collected after the pond is dewatered. The coal particles so collected are of fine quality ash free and the same is used as fuel. It is contended that slurry is nothing but coal and therefore, the State Government by Notification dated 26-12-77 fixed the sales tax @ 4% on the sale of coal slurry. However, the State Government came with another notification dated 3rd January, 1998 whereby it has made amendment in the earlier notification and Entry No. 215 has been added with respect to the items "slurry and sludge" fixing rate of sales tax at 8% i.e. exceeding 4%, which is wholly illegal and without jurisdiction.

3. Mr. Biren Poddar, learned Counsel appearing on behalf of the petitioners, has challenged the impugned notification as being illegal, arbitrary and contrary to the conditions put under the Central Act. According to the learned Counsel, Section 15 of the Central Act put restrictions and conditions that tax payable under the State law in respect of any sale or purchase of declared goods inside the State shall not exceed, 4% of the sale or purchase price thereof. Learned Counsel further submitted that slurry has already been declared by the Supreme Court as coal in the case of *M/s. Bharat Coking Coal Ltd. v. State of Bihar and Ors.* (1990) 4 SCC 557, and coal has been declared a goods to be of special importance and is a declared goods within the meaning of Section 2(c) of the Central Act. Learned Counsel, therefore, submitted that fixing higher rate of tax exceeding 4% on slurry is beyond the competence of State Government in view of the restrictions and conditions put by Section" 15 of the Central Act.

4. On the other hand, Mr. A. Sahay, learned G.A., submitted that slurry and sludge cannot be equated with the coal inasmuch as the slurry is residual or a waste product or by product of chemical process. It is further contended that as by nomenclature and constitution, the slurry is different from coal and hence 8% sales tax has been notified by Commercial Taxes Department by the impugned notification. Learned Counsel relied upon a decision of this Court in the case of *Bajrangbali Coke Briquetting Industries v. State of Bihar* 1987 PLJR 926.

5. Before appreciating the rival submissions of the learned Counsel, it would be useful first to look into the relevant law in the subject.

6. Article 286 of the Constitution of India put restriction as to imposition of tax

on the sale or purchase of goods. However, it provides that Parliament may, by law, formulate principles for determining when sale or purchase of the goods takes place and may authorise the State to make law on the sale and purchase of the goods inside the State subject to restrictions and conditions. The Parliament in pursuance of the power conferred under Article 286 of the Constitution of India enacted the Central Sales Tax Act, 1956 and by Section 14 of the said Act certain goods has been declared to be of special importance in inter-State trade or commerce which includes the coal including coke in all its forms, but excluding Charcoal. Section 15 of the said Act put certain restrictions and conditions in regard to tax on sale or purchase of declared goods within the State. Section 15 of the said Act reads as under:

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-Every sales tax law of a State shall, insofar 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) tax payable under that law in respect of any sale or purchase of such goods inside the State not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy ;

(d) each of the pulses referred to in Clause (via) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

7. The Bihar Finance Act was enacted in 1981. Section 12 of the said Act makes the provisions regarding fixation of rate of tax by the State Government. The said section reads as under:

12. Rate of tax.-(1) The sales tax or purchase tax payable by a dealer u/s 3 or 4 shall be levied at the rate of eight percentum of his taxable turnover:

Provided that the State Government may, from time to time, by notification and subject to such conditions and restrictions as it may impose, fix higher rate not exceeding twenty-five percentum or any lower rate not below two percentum in respect of such class of dealers or such goods, class or description of goods, or

such sales, category or description of sales as may be specified in the notification.

(2) Notwithstanding anything contained in this part the levy of the tax payable by a dealer under this part on sales or purchases of declared goods made by him inside Bihar shall be subject to the restrictions and conditions contained in Section 15 of the Central Sales Tax Act, 1956 (LXXIV) of 1956).

8. From bare perusal of the aforesaid provisions, it is manifest that Sub-section (1) of Section 12, inter alia, provides that the sales tax or purchase tax payable by a dealer u/s 3 or 4 shall be levied @ 8% of his taxable turnover. However, Sub-section (2) put a restriction that the levy of the tax payable by a dealer on sale or purchase of declared goods inside Bihar shall be subject to the restrictions and conditions contained in Section 15 of the Central Sales Tax Act, 1956. It is, therefore, evident that keeping in view the aforesaid restrictions and conditions put by Section 15 of the Central Act the State Government, in exercise of its power u/s 12 of the State Act issued a notification dated 26-12-77 and fixed the rate of sales tax as 4% on the declared item of goods i. e. "coal including coke in all its form but excluding Charcoal. It has not been disputed by the learned Government Advocate that if the slurry and sludge comes within the definition of "coal" then the State Government cannot levy sales tax exceeding 4% in view of the fact that it is a declared goods and having regard to the restrictions put u/s 12 of the Bihar Finance Act, 1981.

9. The only question, therefore, falls for consideration is whether slurry, which is the subject-matter of this case, is a coal or not is no longer *res integra*. This question has been answered long back by the Apex Court in the case of *M/s. Bharat Coking Coal Ltd.* (supra). In that case a question come for consideration was whether the State of Bihar had legal authority to execute leases in favour of the respondents for collection of slurry on payment of royalty to it. This Court held that the slurry, which escaped from washery and deposited in the river bed or to some other, the same ceases to belong to the appellant-B.C.C.L.

Consequently, the State of Bihar had authority to settle the collection of slurry. Allowing the appeal, their Lordships held that slurry, which escaped from the washery is mineral and its regulation is within the exclusive jurisdiction of the Central Government. Their Lordships further held as follows:

Before we consider the contentions of the parties, we think it necessary to briefly discuss the nature and characteristics of the slurry. There is no dispute that coal is found in seams mixed with mud and other impurities. After its extraction from the mines, it is crushed into different sizes, thereafter it is washed in the washeries of the coal mines for removing its impurities for purposes of making it fit for use for metallurgical purposes. In the washery plants, coal is washed with the medium of water mixed with pine oil and sand through mechanical process. In the process of washing, large quantity of water is discharged through pipes which carry the discharged water to storage ponds constructed for the purpose of retaining the slurry. Along with the discharged water small particles of coal are

carried away to the pond where the coal particles settle down on the surface of the pond, and the same is collected after the pond is de-watered. The coal particles so collected are of fine quality, ash free and the same is used as fuel. The slurry is a descriptive expression, it may be cement slurry or coal slurry, depending upon the character or quality of the mixture of mineral in the liquid form. In Websters New 20th Century Dictionary, slurry is defined as follows:

A thin mixture of water and any of several fine, insoluble materials as clay, cement, soil, etc.

In common parlance, slurry is a liquid form mixed with some other material. In Encyclopaedia Britannica "slurry" is defined as under:

Slurry-water mixture or suspension of insoluble matter. In the manufacture of portland cement, a mixture of the raw materials with water is called a slurry. Cement may be as a slurry in building construction. Coal may be transported over long distances as a slurry via pipeline ; this method of transmission is economical between large producing areas and markets where large tonnages are used at a fairly uniform rate. The shipment of iron ore as slurry, either by pipeline or by tanker, also has increased. When slurry reaches its destination, the material is separated from the water before use or further processing.

10. The apex Court reiterated the law decided in the case of B.C.C.L. (supra) and held that slurry is a coal in the case of M/s. Jugnu Construction Ltd. and Anr. v. C.C.L. and Ors. Civil Appeal No. 3778 of 1989.

11. Having regard to the law settled by the Supreme Court, we have no option but to hold that slurry and sludge coming from coal washery plant is nothing but coal in its different forms and it is a declared goods under the Central Act.

12. Mr. A. Sahay, learned Government Advocate, put a heavy reliance, on the decision of Bajrangbali Coke Briquetting Industries (supra) and drew my attention to paragraph 16 of the judgment and submitted that residuary rejects of the process of washing coal cannot be equated with coal itself. In my opinion, the submission of the learned Counsel is falacious. In paragraph 16 of the said judgment the Division Bench reiterated the principles laid down by a Division Bench of this Court in Kundori Labour Co-operative Society Ltd. and Vs. State of Bihar and Others, . That decision of the Division Bench in Kundori Labour Co-operative Society Ltd, "s case has been overruled by the Apex Court in the case of M/s. B.C.C.L. (supra). In my opinion, therefore, the decision in Bajrangbali Coke Briquetting Industries (supra), indeed has also been impliedly overruled in view of the aforesaid judgment of the Supreme Court.

13. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I am of the definite opinion that slurry and sludge coming from the coal washery and other plants are nothing but a form of coal and, therefore, the State Government has no authority to increase the rate of tax more than 4% in the sale and purchase of the said commodity in contravention

and disregard of the restrictions put under the Central Sales Tax Act.

14. In the result, all these writ petitions are allowed and the impugned Notification No. S.O. 3 dated 3rd January, 1998 is quashed to the extent that the rate of tax in respect of slurry and sludge, which is a form of coal, cannot and shall not exceed 4% in the sale and purchase of that article. It is the case of the petitioners that pursuant to the impugned notification all the coal companies of Coal India Ltd. including respondent No. 7 started charging 8% sales tax instead of 4% on the sale of slurry from their customers including the petitioners. Besides this the respondents also charging 1% additional tax over the same although as already stated above the State Government vide notification No. S.O. 1613 dated 28th October, 1981 has already exempted the item "all declared goods u/s 14 of the Central Sales Tax Act, 1956" from the levy of additional tax leviable u/s 6 of the Bihar Finance Act, 1981. This fact has not been disputed by the respondents. In such circumstances, the Respondents are liable to refund the excess amount realised from the petitioners. The respondents are accordingly directed to refund the excess amount of tax realised from the petitioners.

S.J. Mukhopadhaya, J.

15. I agree.