(1989) 08 PAT CK 0037

In the Patna High Court

Case No : C.W.J.C. No''s. 2006, 2178 and 2460 of 1988 (R)

CIO Tyres Private Ltd. and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 09-08-1989

Acts Referred:
Bihar Finance Act, 1985 — Section 21, 21(1)
Bihar Sales Tax Rules, 1983 — Rule 13A

Citation : (1990) 1 PLJR 397

Hon'ble Judges : S. Roy, J;N.S. Rao, J

Bench : Division Bench

Advocate : Pawan Kumar and M.S. Mittal, for the Appellant; Narayan Roy and M.M. Pal, for the Respondent

Judgement

S. Roy, J.—These three cases were also heard along with C.W.J.C. No. 1034 of 1984 (R) and its analogous cases. Judgment in all those cases other than these three cases has been delivered on 2nd August. 1989. In these three cases assessment of tax under the Bihar Finance Act, 1981 as amended in 1984 (the Act) had been completed. The judgment in these cases, therefore, is being delivered separately.

2. Petitioners in these three cases also are contractors executing works contract. Admittedly, there is no dispute that the annual turn over of each of the Petitioners was above Rs. 25,000/-.

According to the Petitioner-CIO Tyres Private Ltd. (in C.W.J.C. No. 2178 of 1988/ R) it carries on business of re-treading of old tyres of different vehicles, most part of its business in course of inter-State trade. According to it, since it executed contract in the nature of works-contract, no tax was payable as element of sale of goods was not involved. Even if any tax payable, it must be assessed keeping in view the fact that sale took place in course; of interstate trade. Assessment for the years 1984-85 to 1986-87 has been completed by orders as contained in annexures 7, 7/1 and 7/2 respectively. Demand notice on the basis of assessment were annexures 8, 8/1 and 8/2 for the aforesaid three years. So far Petitioner M/s. India Builders (in C.W.J.C. No. 2460 of 1988/R) was concerned, it undertook works-contract of civil job. Assessment for the years 1986-87 has been made by the order as contained in annexure 5. According to it no tax was payable because it executed works-contract and no element of sale of goods was involved. Tax was deducted at source against its bills. Under wrong advise, it filed returns. In the notice of demand (annexure 6) it was shown that tax paid was in excess of the amount assessed. Even if it was liable to pay any tax, since it paid tax in excess it was entitled to get refund of the same

So far Petitioner Swapan Kumar Saha (in C.W.J.C. No. 2006 of 1988/R) was concerned according to him he also executed works-contract of civil nature. Although no tax was payable, tax was deducted at source and the Petitioner by the order as contained in annexure 4 has been assessed for the years 1984-85.

3. Rule 13A introduced in the Bihar Sales Tax Rules 1983 on 8th October, 1986 was made to give effect to Sub-clause (i) to clause (a) which was introduced in Sub-section (1) of Section 21 by Bihar Finance Act, 1985. Section 21 provides the method for computing the taxable turnover of a dealer. For that purpose, so far works-contract is concerned Clause (a)(i) provides that in case of works contract, the amount of labour charges, in the manner and to the extent prescribed shall be deducted.

In C.W.J.C. No. of 1034 of 1984(R) and its analogous cases, by an elaborate judgment after noticing the decision in Builders Association of India and Ors. v. Union of India and Ors. 73 (1989) S.T.C. 370 : 1989 PLJR (SC) 31, Rule 13A of the Bihar Sales Tax Rules 1983 which was introduced on the 8th October, 1986 was struck down. For the reasons recorded there we strike down Section 2l(l)(a)(i) of the Act. It was also held in those cases that in view of the decision in Builders Association, the assessing authority was bound to take into consideration whe there sale of goods had taken place in course of inter-State trade or commerce or out side the State. Provision of such exemption has been provided in section of the Act. Assessment in all the cases of works contract shall also have to be made keeping in view this provision. Relying on M/s. N.M. Goel and Co. Vs. Sales Tax Officer, Rajnandgaon and another, , in those writ petitions it was held that in execution of works contract, if an employer supplied goods to the contractor which were required to be used for completion of the job and if price of such goods, the contractor was made liable to pay, it shall be deemed that there has been sale of such goods by the contractor to the employer and tax was payable.

4. So far Petitioner-CIO Tyres was concerned, it has not been stated any where in the swrit, petition except making bald statements what materials the Petitioner used for completion of the job of re-treading. One material which to our mind, the Petitioner must be using is rubber for execution of the works-contract and that being the position, it must be held that rubber is a good and the Petitioner must be held to be selling this to its customers.

5. It was not disputed on behalf of the Respondents that assessment of tax in all these cases were made under the provisions of the Act. and the rules made thereunder, including Rule 13A. In all these cases, when the order of assessment was passed, judgments of Builders Association Goel & Co. were not available.

6. Following the reasons given in C.W.J.C. No. 1034 of 1984/R): Reported in 1990 PLJR 407. and its analogous cases and also for the reasons aforesaid, we quash the order of assessment which are evidenced by different annerxures noticed above and also the demand notice in all the cases and direct the assessing officers to pass fresh orders of assessment after giving notice to the Petitioners. In these cases grievance were made by the Petitioners that tax has been deducted at source far in excess of the amount, the Petitioners were liable to pay, which fact at least appears to be true so far Petitioner-India Builders was concerned. The assessing officer shall proceed to pass assessment orders expeditiously and in cases where it is found that excess amount had been paid and/or recovered, the same must be returned within one month from the date of order of assessment.

7. All these writ petitions are disposed of with the above observation and directions.

