(1983) 07 PAT CK 0008

In the Patna High Court

Case No : Taxation Case No. 71 of 1972

Commissioner of Commercial Taxes, Bihar — APPELLANT

Vs

Electrical Executive Engineer, Bihar State — RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:
Bihar Electricity Duty Act, 1948 — Section 3(2)

Citation : AIR 1984 Patna 283

Hon'ble Judges : S.K. Jha, J;Ashwini Kumar Sinha, J

Bench : Division Bench

Advocate : Ramesh Pd. No. 2, Govt. Pleader 6, for the Appellant;

Judgement

Ashwini Kumar Sinha, J.—In pursuance of this Court''s order dated 28th August, 1973, passed in Tax Case No. 71 of 1972, the Commercial Taxes Tribunal, Bihar, has stated the case and the question referred to for opinion of this Court is as follows:--

"Whether on the facts and in the circumstances of the case supply of electrical energy made to the coal mines and Konar Dam of Damodar Valley Corporation is exempt from payment of electricity duty u/s 3(2) (e) of the Bihar Electricity Duty Act, 1948".

2. The Electrical Executive Engineer, Bihar State Electricity Board, Hazaribagh (hereinafter called the assessee) was assessed for duty under the Bihar Electricity Duty Act, 1948 (hereinafter called the Act) by the Assistant Commissioner Commercial Taxes, Hazaribagh Circle, for the period 1964-65 by his order dt 6th December, 1967 (Annexure-A to the statement of case). By this order the assessee''s claim for exemption from duty in respect of supply of electrical energy to Damodar Valley Corporation for use in their coal mines and in the Konar Dam was wholly rejected. Being aggrieved by the said assessment order, the assessee preferred an appeal before the Deputy Commissioner, Commercial Taxes, Chotanagpur Division, who by his order dated 20th

September, 1969 (Annexure-B to the statement of case) dismissed the appeal with a direction to the assessing authority for rectification of figures and admissibility of rebate after necessary verification. Against that order of the Deputy Commissioner of Commercial Taxes, dated 20th September, 1969, the assessee went in revision before the Commercial Taxes Tribunal, Bihar, Patna.

3. Shorn of other details, the relevant facts are that the assessee is a licensee under the Act and sells electrical energy to Damodar Valley Corporation (hereinafter called the Corporation) and other consumers. The assessee has claimed exemption from levy of duty on such supply to the Corporation. Before the revision application was disposed of by the Tribunal, on 3rd September, 1971, the Corporation filed two petitions by one of which the Corporation prayed for being impleaded as an intervener in the application for revision filed by the assessee (this application filed by the Corporation is Annexure-D to the statement of case) and the other application filed by the Corporation was an application for revision of the very order of the Deputy Commissioner, which was impugned by the assessee. The Tribunal heard the learned counsel for both the Corporation and the Revenue and considering all the facts and circumstances of the case rejected the petitions filed by the Corporation by its order dt. 7th October, 1971 (Annexure-F to the statement of case). It is thereafter that the Tribunal disposed of the revision application on 5th November, 1971. The contention of the assessee before the Tribunal in respect of supplies made by him to the Corporation for use in their coal mine and Konar Dam was considered by the Tribunal within the provisions of Section 3 (2) of the Act (Bihar Act 36 of 1948), as substituted by, Amending Act 20 of 1963. The Tribunal held that the electrical energy supplied to the Corporation for raising coal and supplying water for the purpose of generation of electrical energy, was exempt from the levy of electricity duty. In respect of allegation of percentage by the assessing officer at 90% in case of supply to the coal mines and 50% in case of supply to Konar Dam, the Tribunal did not consider it necessary to interfere with the assessment order. The order of the Tribunal is Annexure-G to the statement of case.

4. Aggrieved by the order of the Tri bunal, the Commissioner of Commercial Taxes, Bihar, the applicant in the instant reference case, moved the Tribunal by application dated 11 in January, 1972, (Annexure-H to the statement of case) for referring the question of law, as detailed in the said application to this Court for its opinion. The Tribunal after haying heard learned counsel for the ap plicant and the assessee considered the question to be well settled by the deci sions of the Supreme Court and the Patna High Court and dismissed the application for reference by its order dated 14th April, 1972 (Annexure-I to the statement of case).

5. The applicant (Commissioner of Commercial Taxes, Bihar) being dissatisfied with the order of the Tribunal refusing to refer the case to this Court, moved this Court, and as stated above, this Court by its order dated 28th August, 1973, called upon the Commercial Taxes Tribunal, Bihar, to state a case and the

question, as quoted above, is before this Court for opinion by reference u/s 9D of the Bihar Electricity Duty Act, 1948 as amended by Amending Act 20 of 1963.

6. The only argument advanced on behalf of the applicant (Commissioner of Commercial Taxes) is that the supply of electrical energy made to the coal mines and Konar Dam of the Corporation does not fall within the ambit of Section 3 (2) (e) of the Act, as amended by, Bihar Act 20 of 1963. The submission is that the supply of electrical energy to the coal mine and Konar Dam of the corporation is not covered by the words "generation, transmission or distribution of electricity by that Corporation".

7. It will be useful to quote Section 3 of the Act, as it originally stood before the amendment:

"3. Incidence of duty.- (1) There shall be levied and paid to the State Government on the units of energy consumed or sold, excluding losses of energy in the transmission and transformation, a duty at the rates specified in the First Schedule:

Provided that no duty shall be leviable on units of energy-

(i) consumed by the Central Government or sold to the Central Government for consumption by that Government;

(ii) consumed in the construction, maintenance, or operation of any railway by the Central Government or a railway company operating that railway, or sold to ''hat Government or any such railway company for consumption in the construction, maintenance or operation of any railway;

(iii) consumed by the licensee in the construction, maintenance and operation of his electrical undertaking;

(iv) consumed by, or in respect of, or sold for consumption in any-

(a) mine, as defined in the Indian Mines Act, 1923;

(b) industrial undertakings; except to the extent specified in the Second Schedule;

(vi) consumed for any purpose which the State Government may, by notification, in this behalf declare to be a public purpose and such exemptions may be subject to such conditions and exceptions, if any, as may be mentioned in the said notification.

(2) When a licensee holds more than one licence, duty shall be payable separately in respect of each licence." This old Section was substituted by new Section 3 under the amending Bihar Act 20 of 1963, which is as follows:--

"3. Incidence of duty''.--(1). Subject to the provision of Sub-section (2), there shall be levied and paid to the State Government on the units of energy con sumed or sold, excluding losses of energy in transmission and transformation a duty at the rate or rates specified in the Schedule.

(2) No duty shall be leviable on units of energy-

(a) consumed by the Government of India, or sold to the Government of India, for consumption by that Government;

(b) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway or sold to that Government or any such railway company, for consumption in the construction, in maintenance or operation of any railway;

(c) consumed by the licensee in the construction, maintenance and operation of his electrical undertaking;

(d) consumed by or sold to any person or class of persons exempted from payment of duty u/s 9;

(e) consumed by the Damodar Valley Corporation for the generation, transmission or distribution of electricity by that Corporation;

(underlined by me for emphasis)

(f) consumed for any purpose for which the State Government may, by notification, in this behalf declare to be a public purpose and such exemptions may be subject to such conditions and exceptions, if any, as may be mentioned in the said notification.

(3) When a licensee holds more than one licence, duty shall be payable separately in respect of each licence. A mere glance of two sections, old and new, would show that no duty is leviable on units of energy consumed by the Corporation for the generation, transmission or distribution of electricity by that Corporation.

8. The question that arises is whether the energy utilised for raising coal and supplying water for the generation of electricity can be considered to have been used for the generation of electricity.

9. In my opinion, coal and water are the primary raw materials necessary for the generation of electricity, as has been held by the Tribunal. The expression "generation, transmission or distribution of electricity'''' should, in my opinion, normally encompass the entire process carried on by the Corporation for converting the raw materials (in this case the coal and the water) into the finished goods in this case for generation of electrical energy. If a particular process is so integrally connected with the ultimate production of goods (in this case the electrical energy) but for that process, the manufacture or processing of goods (in this case the electrical energy) would be commercially inexpedient; in my opinion, the materials required in that process would fall within the expression "generation, transmission or distribution of electricity". Reference may be made to the case of the J.K. Cotton Spinning and Weaving Mills Co. Ltd.

Vs. Sales Tax Officer, Kanpur and Another, in which it was held, on the facts of that case, as follows (At p. 1313 of AIR) :--

"In our judgment if a process or activity is so integrally related to the ultimate manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in rule 13 will qualify for special treatment."

Though that case related to the Central Sales Tax Act and considered the expression "in the manufacture of goods" in Section 8 (3) (b) of the Act; ratio decided in that case, in my opinion, is fully applicable in the instant case as well. This case of the Supreme Court also referred to its own earlier judgment in the case of the Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, . The same principle was followed by this Court in the case of Tata Iron and Steel Company v. State of Bihar 1970 BLJR 677.

10. From the principles so well settled, it is clear that in the instant case a wide interpretation has to be given to the words "generation, transmission or distribution of electricity" so as to include within its ambit also the energy used in the production of raw materials necessary for the generation of electricity. Though it will be mere repetition I may state that coal and water are the raw materials necessary for the generation of electricity and hence, in my opinion, the energy consumed for raising coal and supplying water for the purpose of generating electricity is eligible for exemption u/s 3 (2) (e) of the Act.

11. Learned counsel appearing for the Department has relied upon the case of the The Union of India (UOI) Vs. The Commercial Tax Officer, West Bengal and Others, , which, in my opinion, on the facts of that case, is wholly irrelevant for the purpose of the instant case.

12. Thus, in my opinion, the question for opinion of this Court has to be answered in affirmative and in favour of the assessee. It is, accordingly, held that on the facts and in the circumstances of the case supply of electrical energy made to the coal mines and Konar Dam of the Corporation is exempt from payment of electricity duty u/s 3 (2) (e) of the Act. In view of the fact that none appeared on behalf of the assessee, I shall make no order as to costs.

S.K. Jha, J.

I agree.

