
(2004) 02 JH CK 0025

In the Jharkhand High Court

Case No : Writ Petition (T) No. 5846 of 2003

Eastern Tar Private Limited

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Bihar Finance Act, 1981 — Section 2, 22, 23, 3, 6

Citation : (2004) 137 STC 263

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Amareshwar Sahay, J

Bench : Division Bench

Advocate : N.K. Pasari and A.R. Choudhary, for the Appellant; K.K. Jhunjhunwala, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The writ petitioner, an assessee under the Bihar Finance Act, has filed this writ petition challenging the communication, annexure 7 dated October 17, 2003, issued by the Deputy Commissioner, Commercial Taxes, Adityapur Circle, informing the petitioner that in terms of the Notifications S.O. Nos. 65 and 66 dated January 12, 2002, the petitioner was entitled to set-off only the sales tax paid in the State of Jharkhand on purchase of raw materials, against the sales tax paid by it on sale of finished goods and was not entitled to set-off the additional tax paid on the purchase of raw materials against the sales tax paid on sale of finished goods and directing the petitioner to deposit the amount of additional tax wrongly set-off. According to the petitioner, a company engaged in the manufacture of coaltar (pitch) and allied products, it was entitled to the concessions held out by the Jharkhand Industrial Policy, 2001 and the Notifications S.O. Nos. 65 and 66, both dated January 12, 2002 and to claim set-off in terms of Sections 22 and 23 of the Bihar Finance Act, 1981. The petitioner has been found entitled to such a set-off and once it is found that it was entitled to a set-off, it was entitled to set-off not only the sales tax paid, but also the additional tax paid and the Deputy Commissioner was in error in taking

the view that the additional tax paid was not liable to be set-off by the petitioner. According to the petitioner, the terms of the industrial policy was clear, the relevant clause in the industrial policy was plain, the sections were specific and the notifications were clear and going by them, the set-off took within its purview not only the sales tax paid but also the additional tax paid. In terms of the definition contained in Section 2(x) of the Act, tax included sale or purchase tax levied u/s 3 as also the additional tax levied u/s 6 of the Act. The conclusion of the Deputy Commissioner was clearly unsustainable in the circumstances.

2. On behalf of the Commercial Taxes Department, it is contended that going by the relevant clauses in the Industrial Policy and the notifications relied on by the petitioner, what was liable to be set-off was only the sales tax paid on purchase of raw materials and nothing else. The levy of additional tax was an independent levy u/s 6 of the Act and the provision for set-off cannot take in that independent levy, unless so specified by the statute or the notification and in that situation, the Deputy Commissioner was justified in directing the petitioner to deposit the additional tax illegally set-off by the petitioner.

3. Under Clause (28) of the Jharkhand Industrial Policy, 2001, certain benefits were given to the industrial units coming within the purview of that policy. The relevant clause provides :

"New industrial units as well as existing units which are not availing any facility of tax deferment or tax-free purchases or tax-free sales under any notification announced earlier, shall be allowed to opt for set-off of Jharkhand sales tax paid on purchase of raw materials within the State of Jharkhand only against sales tax payable either under the Jharkhand Sales Tax Act or the Central Sales Tax Act on the sale, excluding stock transfer or consignment sale outside the State, of finished products made out from such raw materials, subject to a limitation of six months or the same financial year from the date of purchase of such raw materials." (Emphasis* supplied.)

*Here italicised.

4. The policy thus clearly suggests that what can be opted for set-off is the Jharkhand sales tax paid on purchase of raw materials within the State of Jharkhand. It is liable to be set-off only against the sales tax payable either under the Jharkhand Sales Tax Act or the Central Sales Tax Act on the sale of the finished goods. Thus, a reading of Clause (28) of the Jharkhand Industrial Policy does not indicate that a set-off of the additional tax was contemplated.

5. The position is not different when we look at the notifications dated January 12, 2002. The relevant clause also says that the benefit of the facility of set-off shall be available only on Jharkhand sales tax paid on raw materials purchased within the State against the Jharkhand sales tax payable on sale. Thus, the notification also does not, on the face of it, indicate that the additional tax is also liable to be set-off.

6. Section 22 of the Act provides that the State Government may permit, by an order published in the official gazette, any dealer running a manufacturing unit in the State to adjust the amount of tax paid on the purchase of raw materials which have been used for manufacture of goods for sale within Jharkhand against the tax payable on sale of finished product in Jharkhand in such manner as may be laid down in the order allowing permission. Section 23 of the Act also on the same terms extends the benefit of set-off even if the sale of the finished product has been made in the course of inter-State trade. Sections 22 and 23 by themselves do not advance the case of the petitioner and they only indicate that the extent of adjustment and its manner would be as laid down in the order allowing the permission.

7. The main argument raised on behalf of the petitioner is that "tax" is defined to include additional tax payable under the Act as can be seen from Section 2(x) of the Act and when Sections 22 and 23 allow set-off of the amount of tax paid, that would include the amount of additional tax paid as well. The definition of tax was an inclusive definition and additional tax has been specifically brought within the definition and in view of this, the benefit of its set-off should be available to the assessee. Counsel relied on the decision of the Supreme Court in *Ashok Service Centre v. State of Orissa* [1983] 53 STC 1 in support. In that decision, their Lordships of the Supreme Court held that Section 3(1) of the Orissa Additional Sales Tax Act was not a complete and self-contained code on the charge created by it. Section 3(2) which formed an integral part of the charging section, showed that the State Legislature intended not to depart substantially from the principal Act, except in regard to the matters in respect of which express provision had been made therein. Counsel also relied on the decision of the Supreme Court in *State of Karnataka Vs. Sunagar Brothers*, to point out that while dealing with the right of appeal under the Karnataka Sales Tax Act, the Supreme Court had held that the expression "payment of tax" not disputed in appeal, which was a condition precedent for entertaining the appeal, included additional tax also and hence, the payment should be not only of the sales tax but also of the additional tax. Counsel submitted that the same understanding of the expression "tax" was called for in the context of the definition in Section 2(x) of the Act and the ratio of the said decisions should govern the decision in this case. Counsel also referred to a decision of the Patna High Court in *Hindustan Petroleum Corporation Ltd. v. State of Bihar* [1985] 58 STC 61, wherein the definition of "tax" occurring in the Act was referred to and it was opined that a dealer was entitled to recover from the purchaser not only the sales tax, but also the additional tax which was payable by him under the Bihar Sales Tax Act, 1959.

8. Before considering this submission, we think it appropriate to refer to the scheme of the Bihar Finance Act, now the Jharkhand Finance Act. Section 3 of the Act is the charging section insofar as sales tax or purchase tax is concerned. The charging section relating to the additional tax is Section 6. Section 6 provides that every dealer having a gross turnover exceeding the specified quantum as laid down in Section 3, shall pay an additional tax at such rate not

exceeding 2 per centum of his gross turnover as the State Government may, from time to time, by notification fix. Sub-section (2) thereof provides that the State Government may, by notification and subject to such conditions and restrictions as it may impose, exempt from levy of additional tax gross turnover in respect of any goods or class of goods. In the context of the two decisions of the Supreme Court relied on by learned counsel for the petitioner, the question would be, whether Section 6, the charging section relating to additional tax, is a self-contained provision or is only an appendage to Section 3 of the Act, the charging section, relating to sales tax or purchase tax. This question need not detain us much, in view of the clear pronouncement by the Supreme Court in that behalf, in *M/s. Kumar Distributors (P) Ltd. Vs. State of Bihar and others*, . Therein, the Supreme Court was considering whether, so far as additional tax was concerned, Section 6 of the Bihar Finance Act (now the Jharkhand Act) was self-contained not only for charging additional tax, but also for its exemption. Their Lordships, after referring to the two decisions of the Supreme Court relied on by learned counsel for the petitioner and referred to by us earlier and after referring to the definition of tax in Section 2(x) of the Act, to Sections 6, 7 and 21, held that so far as the charge of additional tax was concerned, Section 6 was self-contained not only for charging additional tax, but also for its exemption. Their Lordships distinguished the decisions of the Supreme Court earlier referred to, by pointing out that in the enactments concerned therein, the charging section for additional tax was not self-contained. Learned counsel for the petitioner tried to argue that in *Kumar Distributors*" case [1995] 99 STC 441 the Supreme Court was mainly concerned with the question whether an exemption u/s 7(3) of the Act ipso facto covered also the additional tax leviable u/s 6 of the Act and if so understood, this Court could hold that the right to set-off took in not only the sales tax, but also the additional tax. We have already indicated that in terms of the relevant clause in the industrial policy and the notifications, it is not possible to accept this contention. That apart, in *Kumar Distributors*" case [1995] 99 STC 441, the Supreme Court was not only dealing with the scope of exemption, but was also considering the question whether Section 6 of the Act, with which we are concerned, was a self-contained section for charging additional tax and the Supreme Court clearly pronounced that it was such a self-contained charging section. That was the basis for distinguishing the earlier decisions. We feel bound by that decision. We are, therefore, of the view that in the light of the ratio in *M/s. Kumar Distributors (P) Ltd. Vs. State of Bihar and others*, it is not possible to accede to the contention raised on behalf of the petitioner.

9. Thus, going by the language of the industrial policy, the language of the notifications and on the basis that Section 6 of the Act is a charging section and is self-contained as held by the Supreme Court, the Deputy Commissioner was justified in holding that the petitioner was not entitled to set-off additional tax paid by him against the sales tax payable on the sale of goods within or outside the State. Thus, the demand in annexure 7 is perfectly valid and is fully justified and no case is made out for interference with annexure 7.

We, therefore, dismiss this writ petition.