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(2003) 07 JH CK 0014

In the Jharkhand High Court

Case No : CWJC No. 2997 of 1987 (P)

Hindustan Copper Limited — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 17-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 46

Citation : (2003) 3 JCR 420

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

Bench : Division Bench

Advocate : S.B. Gadodia and S.L. Agarwal, for the Appellant; S. Gadodia, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—This writ petition challenges the order of assessment of Sales Tax under the Bihar Finance Act made against the petitioner for the assessment years 1974-75. The question that arose for decision was whether the items sold in the canteen run by the assessee in terms of its obligation u/s 46 of the Factories Act to run a canteen could be treated as sales and the turnover thereon and the turnover in respect of some articles sold by it to its employees, allegedly at concessional rates, could be included in the assessable turn-over of the assessee. The assessing authority negatived the claim of the assessee and held that the turn-over was liable to be included while completing the assessment. This view was upheld by the appellate authority. In a revision to the Tribunal, the Tribunal also held that the sales in the canteen and the provision stores should be treated as sales under the Act and the turn-over thereon be included in computing the total turnover of the assessee. But accepting the plea of the assessee that it may be given an opportunity to produce Forms C, D and IX-C in respect of the amounts covered by the entire turn-over, ''remitted the proceeding to the assessing authority giving the assessee a further opportunity. It was noticed by the Authorities under the Act that the petitioner, a registered dealer under the Act, had a registration for dealing with the items sold in the canteen and in their stores. On behalf of the assessee, reliance was placed on the decision of the Full Bench of the Patna High Court in Tata Iron and steel Company limited v. State of Bihar 58 STC 302 Pat in which the full Bench had held that to come within the ambit of the definition of dealer in Section 2(f) of the Bihar Sales Tax Act, 1959, a dealer should carry on a business in the concerned commodity and the omission of the words ''carries on business'' brought about by an amendment to the definition by the 1959, Act, did not enable the Authority to tax an assessee who was not carrying on a business in that commodity. The Tribunal distinguished this decision on the ground that in the case on hand, the assessee was a ''dealer'' in fact and had got itself registered as a dealer in the commodity it was dealing with in its provision stores and the canteen.

2. Learned counsel for the assessee challenged this approach of the Tribunal and contended that the Tribunal was in error in distinguishing the decision of the Full Bench. Learned counsel for the Department, on the other hand, contended that the Full Bench had not properly appreciated the amendment to the definition of ''dealer'' brought about by the 1959 Act and the effect of the deliberate departure made from the earlier definition in the 1947, Act and the deletion of the words ''carries on business''. In short, the Department, submitted that the Full Bench has not laid down the correct law and this will be clear from a subsequent decision of the Patna High Court. Learned counsel also submitted that the Tribunal was justified in distinguishing the decision of the Full Bench on the facts and in the circumstances of the case.

3. Even apart from the question of correctness of or the propriety in distinguishing the decision of the Full Bench in Tata Iron and Steel Company Limited case, we find that the ratio of that decision cannot be accepted as correct. In that case, the Full Bench had applied the ratio of Commissioner of Sales Tax Vs. Basta Colla Colliery Co. Ltd., . But the ratio of Basta Colla Colliery, could not be accepted as correct in view of the decision of Supreme Court in Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, This position is supported by the subsequent decision of the Patna High Court. In Ramji Prasad Vs. Commissioner of Commercial Taxes, a Division Bench of the Patna High Court, after referring to the decision in the Commissioner of Sales Tax Vs. Basta Colla Colliery Co. Ltd., and that of the Supreme Court in Motipur Zamindary Co. Private Limited v. State of Bihar and Anr. 13 STC 01 held that the decision in Basta Colla Colliery Case cannot be taken to lay down the correct law in view of the fact that the question was covered by the decision of the Supreme Court referred to above. Their Lordships, after referring to the ratio of the Basta Colla Colliery case to the effect that the change in the definition of ''dealer'' did not make any difference in casting a lability on the assessee and that the deletion of the words ''who carries on business'' did not make any difference, held that in Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar, the position adopted in Basta Colla Colliery, was rejected and the argument that an assessee who was an

agriculturist, could not be treated as a dealer since he was not carrying on a business, was overruled. The Division Bench held that in view of the authoritative decision of the Supreme Court on that point, it had to be held that the decision in Basta Colla Colliery stood overruled.

4. In Tata Iron and Steel Company Ltd. Vs. The State of Bihar and Others, the Full Bench adopted the view in Basta Colla Colliery case. In view of the decision of the Supreme Court in Motipur Zamindary Co. Private Limited v. State of Biha 13 STC 01 and the ratio of the decision Ramji Prasad case 79 STC 379 it has to be held that the Full Bench decision relied on the assessee cannot enable the assessee to contend that it was not carrying on a business in the goods it sold in the canteen or its stores and that it cannot be treated as a dealer. With respect, we think that the change in the definition brought about by the 1959, Act read with the charging section in that Act, clearly leads to the position that, to be treated as a dealer under the Bihar Finance Act, it is not necessary that the assessee should be carrying on a business in a particular commodity. When the charging section imposes the liability, we cannot resort to other sections to whittle down its effect. In any event, in this case no such exercise is warranted especially in view of the amended definition of dealer and the expounding of the law by the Supreme Court. We have, therefore, no hesitation in overruling the argument raised on behalf of the assessee based on the decision in Tata Iron and Steel Company Limited v. The State of Bihar 58 STC 302: bound as we are by the decision of the Supreme Court in Motipur Zamindary Case.

5. Once that argument is overruled, the position is that the Tribunal has given another opportunity to the assessee to show that its turn-over was liable to be excluded on the basis of Forms C and D and IX-C it is in a position to produce. Grant of such an opportunity has not been questioned by the State. In that situation, we find no reason to interfere with the order of the Tribunal in this writ petition. We, therefore, dismiss the writ petition.

R.K. Merathia, J.

I agree.