
(2002) 12 PAT CK 0047
In the Patna High Court
Case No : C.W.J.C. No. 2656 of 2002

Hindustan Lever Ltd. and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2002) 12 PAT CK 0047

Judgement

Nagendra Rai, J.—This writ petition has been filed for quashing the order dated January 10, 2002 passed by the Commercial Taxes Tribunal, Bihar, Patna, in Revision Case No. 24 of 2001, dismissing the revision application against the order dated January 24, 2001, passed by the Commissioner of Commercial Taxes, Bihar, Patna, in exercise of the suo motu power of revision, by which the learned Commissioner has upheld the order dated May 27, 2000 passed by the Assistant Commissioner of Commercial Taxes, Patna city (West) circle, Patna city, under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 (hereinafter referred to as "the Act"), read with the provisions of Section 17(2) of the Bihar Finance Act, 1981.

2. The period for which the liability has been determined under the Act is October 15, 1998 to March 31, 1999. The tax has been determined as Rs. 59,16,941.51 and Rs. 2,020 has been added as penalty u/s 16(8) of the Bihar Finance Act, read with Section 8 of the Act. Thus, the total liability of the entry tax determined against the petitioners including the penalty for the relevant period is Rs. 59,18,962.

3. The petitioner No. 1 is a company registered under the Companies Act and its head office is at Bombay and regional office at Kolkata. It is engaged in carrying on business of selling and distributing its products in Bihar through its carrying and forwarding agents (for short, "C and F agents") set up at different places in the State of Bihar, namely, Patna, Raxaul, etc. It also engages C and F agents through individual contracts with each party. Petitioner No. 2 is a shareholder of petitioner No. 1 and is interested in the business of the petitioner-company.

4. The admitted fact is that petitioner No. 1 is a dealer under the provisions of the Bihar Finance Act and registered as such. It is also registered under the provisions of the Act, According to the petitioners, its C and F agents maintains the godown for restoring the vegetable hydrogenated oil in Mohalla Pahadi under Patna city west circle in Patna city. It has filed a return for different periods, including the relevant period October 17, 1998 to March 31, 1999 and paid tax on the hydrogenated oil brought from outside the State of Bihar. It purchased the vegetable hydrogenated oil at Mihrjam and Dehri-on-Sone situated in the State of Bihar from the manufacturers therein, and after purchase the same were brought to Patna and kept in the custody of its C and F agent. The said goods were sold to its stockists located in the different parts of Bihar, including Patna. They were also sold in the other local areas in Bihar and also sent outside the State of Bihar by way of stock transfer and/or export to places outside India. In the return filed under the Act, petitioner No. 1 included the purchases made at Mihijam and Dehri-on-sone both situated in the State of Bihar, but claimed exemption in terms of Rule 7(1) of the Rules framed under the Act and also on the grounds that the goods were neither consumed nor used, nor sold in Patna for the purpose of use and consumption in the Patna local area. The assessing authority did not allow the exemption and made the assessment u/s 17(2) of the Bihar Finance Act, read with Section 8 of the Act, which makes the provision of the Bihar Finance Act and the Rules framed thereunder applicable to the proceedings under the Act and assessed the tax and penalty as stated above by order dated May 27, 2000 (annexure 2 to the writ application).

5. Against the said order, a revision u/s 46(4) of the Bihar Finance Act was filed before the learned Commissioner, Commercial Taxes, Bihar, Patna, who dismissed the same by order dated January 24, 2001. Thereafter, the petitioner filed a revision before the Commercial Taxes Tribunal, Patna, being revision No. 24 of 2001, who heard the same along with other revisions filed by the petitioners with regard to other periods and by a composite order dated January 10, 2002 dismissed the revision for the relevant period and remanded the matter with regard to the other periods.

6. Mr. Sidhartha Shankar Ray, learned Senior Counsel appearing for the petitioners, raised three submissions. Firstly, he submitted that the authorities under the Act wrongly fixed the liability of tax under the Act only on the ground of entry of hydrogenated oil in the local area and sale therein. Neither the entry of said goods in the local area nor its sale therein will attract the liability under the Act. The entry of goods must be for the purposes of consumption, use or sale in the concerned local area. He further submitted that the hydrogenated oil is admittedly purchased at Mihijam and Dehri-on-Sone both in the State of Bihar and the petitioners have purchased the same from the manufacturers of hydrogenated oil at the aforesaid two places and have filed the relevant documents as provided under Rule 7 of the Rules framed under the Act and as such the said hydrogenated oil is exempted from payment of tax under the Act in view of the specific provisions contained under the said rule. Thirdly, he

submitted that the provisions of the Act have been amended by Ordinance No. 1 of 2001 on July 10, 2001, followed by a notification issued by the Government u/s 3(1) of the Act specifying the rates, conditions and restrictions subject to which tax shall be charged under the Act. It has been clarified by the proviso added to the definition of entry of goods [2(c) of the Act] that in case of scheduled goods, which are liable to tax u/s 12(A) of the Bihar Finance Act, entry of goods shall mean entry of goods into local area in Bihar from any place outside Bihar. The said provision is clarificatory or declaratory in nature and if the goods are procured or manufactured in the State of Bihar and purchased and brought in any other local area of the State of Bihar even for the purposes of use or mere consumption or sale therein, the same would not be liable to tax under the provisions of the Act.

7. Learned counsel appearing for the State combated all the three submissions and submitted that the local areas have been defined u/s 2(f) of the Act and once the goods are brought from one local area to the other local area even in the State of Bihar for the purpose of consumption, use or sale therein, Section 3, which is charging Section, is attracted and the dealer will be liable to pay tax. It is a different matter that the liability under the Bihar Finance Act will be reduced to the extent of the tax paid under the Act. He further submitted that Rule 7 of the Rules framed under the Act provided for exemption from entry on local goods only at a local area where the said goods are manufactured or processed, but once that moves from one local area and enters into other local area for the purposes of consumption, use or sale therein, the goods are liable to payment of tax under the Act. He further submitted that the amendment brought in the year 2001 is neither clarificatory nor declaratory rather it is an amendment, which is applicable from the date of its notification, i.e., July 10, 2001 and the same cannot be given a retrospective operation.

8. Before advertng to the submissions advanced at the Bar, it will be relevant to state the relevant provisions having a bearing on the question in controversy. Entry 52 of List II (State List) of the Seventh Schedule to the Constitution of India empowers the State to impose tax on the entry of goods into a local area for consumption, use or sale therein. The Act in question was enacted by the State of Bihar in the year 1993 by virtue of the power conferred under the aforesaid entry. The object of the Act is to levy tax and collection of tax on entry of goods into local areas for consumption, use or sale therein. Entry of goods defined u/s 2(c) of the Act prior to amendment means the entry of goods into a local area from any place outside that local area or any place outside the State for consumption, use or sale therein. The local areas have been defined u/s 2(f) of the Act, which means the Municipal Corporation, Board, etc. Section 3 of the Act is the charging Section, which prior to amendment in 2001, was as follows :

"3. Charge of tax.--(1) There shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 per centum of the import value of such goods as may be

specified by the State Government in a notification published in an official gazette subject to such conditions as may be prescribed :

Provided different rates for different scheduled goods and different local areas may be specified by the State Government.

(2) The tax leviable under this Act shall be paid by every dealer liable to pay tax under the Bihar Finance Act, 1981, or any other person who brings or causes to be brought into the local areas such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry ;

Provided no tax shall be leviable in respect of entry of such scheduled goods effected by a person other than the dealer if, the value of such goods does not exceed 25 thousands in a year.

(3) Notwithstanding anything contained in Sub-sections (1) and (2) of this section and subject to the provisions of this Act there shall be levied and collected a tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The rate of tax shall be at such rate or rates as may be specified by the State Government by a notification published in the official gazette on the purchase/import value of motor vehicle but not exceeding the rate prescribed for sales tax for such motor vehicles under the Bihar Finance Act, 1981 :

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any other State or Union Territory under the Motor Vehicles Act, 1988, for a period of fifteen months or more before the date on which it is registered in the State under that Act."

9. According to the said section, there shall be levy and collection of tax on the entry of the scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding 5 per cent of the import value of such goods, which may be specified by the State Government by notification published in the official gazette, Rates may be different for different scheduled goods and for different local areas. It further provides that liability to pay tax is of the dealer or any other person, who brings or causes to be brought into local area such scheduled goods whether on his own account or on account of his principal or takes delivery or is entitled to take delivery of such goods on such entry. The dealer of the scheduled goods is required to get himself registered u/s 5 of the Act. Section 6 empowers the State Government to grant exemption from tax to any class of dealers, persons or importers. Section 7 deals with the offences and penalties and Section 8 makes the provision with regard to assessment, reassessment, collection and enforcement of payment of tax and penalty payable under the Act. Section 9 gives power to make Rules. In exercise of the power conferred u/s 9 of the Act, the Rules were also framed on May 17, 1993, which contain a provision with regard to registration, filing of return, payment of tax, maintenance of accounts and issue of cash memo, bill, invoice, etc. Rule 6 of the

Rules provides for claim of exemption from levy of tax on the evidence to be produced by the dealer. It provides, inter alia, that a dealer, who claims that any part of his turnover relating to import of scheduled goods is not liable to tax on the ground that the tax has been paid at the first point of entry into a local area as notified by the State Government under Sub-section (1) of Section 3 of the Ordinance, he will produce relevant documents as mentioned therein in support of the same and in that case exemption shall be granted from payment of levy of tax on the ground that under the provision of the Act, the liability to pay tax is at the first point of entry of the scheduled goods in the local area. Rule 7 provides, inter alia, that every registered dealer, who either manufactures or produces a scheduled goods in a local area and in course of his business sells these goods to another dealer or importer or any other person in the same local area, shall issue a cash memo or bill or invoice specifically certifying therein that the goods so sold are locally manufactured or produced goods and as such no entry tax is payable thereon. The said cash memo will be preserved by the dealer and shall be produced before the authority on demand. Every registered dealer or importer is required to file a copy of the cash memo containing the required certificate along with a statement of all such cash memo, etc., before the assessing authority for claiming exemption from tax on such goods at the time of assessment. Rule 8 deals with the manner for claiming reduction in the liability to pay sales tax.

10. On February 25, 1983 the State Government issued a notification notifying the rate of entry taxes payable on scheduled goods. Hydrogenated oil is one of the scheduled goods having rate of tax of 5 per cent. The said notification further provided that if the importer of the three scheduled goods, namely, Indian made foreign liquor, cement, vegetable hydrogenated oil, is liable to pay tax under the Act and is also liable to pay tax under the Bihar Finance Act by virtue of sale of such goods, his liability under the Finance Act shall be reduced to the extent of the tax paid under the Act. It further provided that the entry tax will be levied only at the point of first entry into a local area or areas and at the subsequent entry in any other local areas the scheduled goods shall not be subject to tax provided the subsequent importing dealer produces before the assessing officer the original copy of the cash memo, invoice, bill or challan issued to him by the dealer from whom he purchased or received the said scheduled goods supported by declaration in the form or manner prescribed.

11. The Act has been amended by Amendment Act of 2001, by which a proviso was added to definition of entry of goods as defined u/s 2(c) of the Act and second proviso was added to Sub-section (2) of Section 3 and Sub-section (3) of Section 3 was substituted. This apart, the Schedule attached with the Act was also amended and in place of 6 articles, 18 articles were notified. A notification was also issued u/s 3(1) of the Act on July 25, 2001, prescribing rate, condition and restrictions for levy of tax. The definition of entry of goods in Section 2(c) with added proviso is as follows :

"2(c). "Entry of goods" with all its grammatical variations and cognate expressions means entry of goods into a local area from any place outside that local area or any place outside the State for consumption use, or sale therein :

Provided that in case of such goods which are liable to tax u/s 12(1) of the Bihar Finance Act, 1981, entry of goods shall mean entry of goods into local area from any place outside the State for consumption, use or sale therein."

12. After the aforesaid amendment, in case the scheduled goods, which are liable to tax under the Bihar Finance Act, the entry of goods for the purposes mentioned therein into the local areas will be liable to tax only if they entered into a local area from any area outside the State. By addition of the second proviso to Sub-section (2) and substitution of Sub-section (3) of Section 3, the provision of the notification dated February 25, 1993 issued u/s 3(1) of the Act as mentioned above has been incorporated. The second proviso to Section 3(2) of the Act is as follows :

"Provided further that where an importer of scheduled goods liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act, 1981 (Bihar Act No. 5 1981) by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act, 1981 shall stand reduced to the extent of tax paid under the Act."

13. It provides that in a case where importer of scheduled goods is liable to pay tax under the Act, becomes liable to pay tax under the Bihar Finance Act by virtue of sale of such scheduled goods, his liability to pay tax under the Bihar Finance Act shall stand reduced to the extent of tax paid under the Act. The substituted Sub-section (3) of Section 3 of the Act runs as follows :

"(3) : The liability to pay tax on scheduled goods shall only be at the point of first entry into a local area and any subsequent entry or entries into any other local area or areas of the said scheduled goods shall not be subject to tax provided the subsequent importing dealer produces before the assessing officer the original copy of the cash memo, invoice, bill or challan issued to him by the dealer from whom he purchased or received the said scheduled goods, and files a true and complete declaration in the form and manner prescribed."

14. Vires of the unamended Act was challenged before this Court and this Court declared the Act as ultra vires. The State of Bihar preferred an appeal before the apex Court and the validity of the Act was upheld and the apex Court declared the Act intra vires. It held that the Act is compensatory in nature and as such not hit by Article 301 of the Constitution of India. Alternatively, it was held that the Act puts a reasonable restriction on the trade, commerce and inter-course and has been enacted in public interest and has received assent of the President and as such saved by Article 304(b) of the Constitution of India. The said judgment is reported in : [1996]2SCR184 (State of Bihar v. Bihar Chamber of Commerce).

15. Thus, from the conjoint reading of the aforesaid provisions as stood prior to

amendment, it is clear that the tax was leviable on entry of scheduled goods into one local area from other local areas within the State or outside the State for consumption, use or sale therein. The tax will be levied at the point of first entry into a local area of the scheduled goods for consumption, use or sale therein and there will be no levy of tax on scheduled goods on any subsequent entry or entries into any other local area or areas. In case of certain scheduled goods, as notified in the notification dated February 25, 1993 if the scheduled goods are liable to tax under the Bihar Finance Act then the tax paid under the Act will be adjusted towards sales tax paid under the Bihar Finance Act, meaning thereby the tax liability under the Finance Act, will be reduced to the extent of the amount paid under the Act. The only amendment, which is of relevance, is proviso to Section 2(c) of the Act, according to which, if the scheduled goods are liable to tax u/s 12(1) of the Bihar Finance Act, in that case the entry of the goods into a local area for the purposes mentioned therein will be liable to tax only when they are brought into local area from outside the State. In other words, if they are brought from one local area to other local area, situated in the State of Bihar then such scheduled goods are not liable to tax after the date of the amendment.

First point

16. The assessing authority and the Tribunal have held that the sale in the local area cannot be given a limited meaning in the sense that the sale must be for the purposes of consumption or use. Once the goods entered into a local area and were sold then the charging Section 3 will come into operation and the dealer will be liable to pay tax under the Act. The first point raised by the learned counsel for the petitioners in substance challenges the aforesaid view taken by the assessing authority including the Tribunal.

17. As stated above, entry 52 of the List II of the Seventh Schedule to the Constitution empowers the State Legislature to levy tax on the entry of goods for the purposes of consumption, use or sale therein. This entry has been the subject-matter of consideration before the apex Court in catena of cases and it is settled law by now that the word "sale" is to be given a limited meaning and the sale must be for the purposes of consumption or use into a local area. It may be that after purchase, the goods may be consumed or used in other local areas. Neither mere entry of goods is enough to attract the charging section nor will the sale of goods attract the charging section. The entry of goods must be for the consumption and use or the sale must be for the purposes of consumption and use in the local area though as a matter of fact in the given case the goods may be taken out and consumed and used in other local areas.

18. The aforesaid entry 52 came up for consideration before a Constitution Bench of the apex Court in the case of *Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality*, . That was a matter with regard to levy of octroi tax. It was held that the company dealing with the petroleum products was liable to pay octroi tax on goods brought into the local area for its

consumption or sale by it to the consumers and for sale to dealers, who in their turn, sold the goods to consumers within the local area irrespective of whether such consumers brought them for use in the area or outside it but it was not liable to pay octroi tax in respect of goods which were re-exported. In the case of Municipal Council, Jodhpur Vs. Parekh Automobiles Ltd. and Others, , the same view was reiterated.

19. Again in the case of Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc., , while dealing with the octroi tax levied by virtue of the aforesaid entry, the apex Court, relying upon the aforesaid cases and the case of Hiralal Thakorlal Dalal Vs. Broach Municipality and Others, held that "the apex Court has read the words "sale therein" occurring in entry 52 of List II as meaning "a sale of goods within a local area for consumption or use therein"--though as a matter of fact, in a given case, the goods may be taken out and consumed there. The decisions clearly say that where the goods are sold within a local area for the purpose of being taken out of that local area and are actually taken out, no levy is permissible under entry 52."

20. The said question was also raised in the case of Bihar Chamber of Commerce : [1996]2SCR184 wherein the vires of the Act was challenged. The apex Court held that the sale must be for the purposes of consumption and use and a simpliciter sale in the local area will not attract the charging section. The apex Court in the aforesaid case at page 16 with regard to the same observed as follows :

"Entry tax is a tax levied at the point of entry of goods into a local area for the purpose of consumption, use or sale therein. It is not a tax on sale. It is a tax on the entry of goods into a local area and it is precisely because of this that the petitioners say, Article 301 is attracted. They cannot, at the same time, say that it is not a tax on entry but a tax in the nature of a tax on sale--apart from the fact that such a contention is wholly misconceived. Taxes on sale and purchase of goods are provided by entry 52 in List II. Moreover, entry 52 has been the subject-matter of several decisions of this Court which say that the tax is upon the entry of goods into a local area, i.e., upon entry of goods for the purpose of consumption, use or sale therein. Neither mere entry of goods is enough to attract the levy nor the mere sale thereof within the local area. What attracts the levy under entry 52 (and under the impugned enactment) is the entry of goods into a local area for consumption or for use or for sale within the local area for the purpose of consumption or use within that local area. Indeed, when it was contended by one of the States, State of Karnataka, that the expression "sale" occurring in entry 52 should be given its full and normal meaning and should not be confined to sale of goods in a local area for consumption or use therein, the contention was rejected by this Court with reference to the earlier decisions of this Court [see Entry Tax Officer, Bangalore Vs. Chandanmal Champalal and Co. Etc. Etc., . The said decision refers to and follows the earlier decisions of this Court on the point."

21. Thus, in view of the settled law, the authorities under the Act including the Tribunal, have committed a serious error of law in holding that once the goods have entered into the local area and have been sold, the charging section will come into play and the dealer will be liable to pay tax. The authorities have to decide while levying tax under the Act apart from entry of goods for consumption and use, the sale was also made for consumption and use in the concerned local area or taken out and consumed in other local areas. However, it is for the dealer to prove at the relevant stage to the satisfaction of the assessing authority that the sale was for the purpose of taking out the goods to the other local areas or goods were re-exported and were not for the purposes of consumption or use. Therefore, the first point urged on behalf of the petitioners succeeds and it is held that the respondent-authorities have committed a serious error of law in coming to the aforesaid conclusion.

Points Nos. II and III

22. These two points are interrelated and will, therefore, be disposed of together. According to the learned counsel for the petitioners, once the goods are manufactured or processed into a local area inside the State of Bihar and sold in the same local area, then the scheduled goods are not liable to entry tax and once a certificate to that effect is filed by a dealer of the other local area, who has brought that goods in that area for the purpose of consumption, use or sale therein before the concerned authority, he is not liable to pay tax under the Act. For this, reliance has been placed upon Rule 7 of the Rules, which runs as follows :

"7. Evidence in support of claim for exemption from entry tax on local goods.--

(1) Every registered dealer, who either manufactures or produces a scheduled goods in a local area and in course of his business sells these goods to another dealer or importer or any other person in the same local area, shall issue a cash memo or bill or invoice specifically certifying therein that the goods being sold are locally manufactured or produced goods and as such no entry tax is payable thereon.

(2) Every registered dealer or importer or any other person shall preserve the cash memo or bill or invoice containing the certificate as provided in Sub-rule (1) and shall produce before the prescribed authority on demand.

(3) Every registered dealer or importer shall file a copy of the relevant cash memo, bill or invoice containing the required certificate along with a statement of all such cash memo, etc., before the assessing authority for claiming exemption from tax on such goods at the time of assessment."

23. As stated above, the Act imposes tax liability with regard to the entry of the scheduled goods into local area for the purposes mentioned in the charging section. The entry may be either from outside the State or it may be from one local area to another local area situated in the State as defined under the Act. The liability to pay tax under the Act is not only upon the dealer but also on

other person, who brings the scheduled goods for the purposes mentioned in the charging section. If the submission of the petitioners is accepted with reference to the provisions prior to amendment, then the charging section will not be applicable to the goods procured and manufactured in a local area in the State and thereafter sold and brought to the other local areas for the purposes of use, consumption or sale therein. A rule cannot rise above the Act. The definition of entry of goods and charging section in the Act prior to the amendment cannot be given a restricted meaning by reference to Rule 7 of the Rules. Rule 7 only provides for exemption from payment of tax under the Act on the entry of scheduled goods into a local area where the same were sold at the place of manufacturing or processing. But once those goods entered into other local area for the purposes mentioned therein, i.e., consumption, use or sale therein, then at first point of entry it is liable to tax and, thereafter, there will be no tax liability at the second point of entry. The amendment to the definition of entry of goods as introduced in 2001, as stated above applies to the scheduled goods liable to tax under the Bihar Finance Act. In that case, the entry of goods shall mean entry of goods from an area outside the State of Bihar into a local area. In case of scheduled goods not liable to tax under the Bihar Finance Act, the movement of entry of goods from one local area to the other local area for the purposes mentioned under the Act is liable to tax. Thus, the amended provisions cannot be termed as only clarificatory or declaratory and will apply even to transaction prior to the amendment as urged on behalf of the learned counsel for the petitioners as the third point.

24. At this stage, I would like to refer to the two decisions relied upon by the learned counsel for the petitioners in support of his submission that the amendment has been made with a view to make the earlier provisions of the Act, namely, Sections 2(c) and 3, workable. It has supplied an obvious omission in the provision and as such it should be given retrospective operation by adopting a reasonable interpretation. According to him, the Legislature never intended that the scheduled goods produced and processed in the State of Bihar and liable to tax under the Bihar Finance Act should be subjected to tax in case of their movement from one local area to the other local area in the State of Bihar. However, its intention was not manifest in the legislative provision. When the Legislature noticed the aforesaid omission, it introduced an amendment by adding a proviso to the definition of entry of goods u/s 2(c) of the Act. He relied upon a judgment of the apex Court in the case of *Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi*, wherein while considering the proviso added to Section 43B of the Income Tax Act, the apex Court held that the proviso brought subsequently will have retrospective effect in operation. In paragraph 13, it was held as follows :

"13. Therefore, in the well-known words of Judge learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of *R.B. Jodha Mal*

Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole."

He also relied upon the case of Shyam Sunder and Another Vs. Ram Kumar and Another, , wherein it was held that the declaratory or explanatory provisions are retrospective in operation and their function is to supply an obvious omission or to clear up doubts in the existing Act and it comes into effect from the date when the previous Act was passed.

25. I am unable to agree with the submission advanced by the learned counsel for the petitioners that the amendments are declaratory or clarificatory in nature. As stated above, the amendments have been made only to give benefit to the dealers with regard to certain scheduled goods which are liable to tax under the Bihar Finance Act. In that case, the scheduled goods will be liable to tax only when the same are brought from outside the State into local areas. Such provision has not been made with regard to the scheduled goods which are not liable to tax under the Bihar Finance Act or in case of non-dealers. In their case, the entry of goods from one local area into other local area in the State of Bihar is liable to tax. The provisions would have been clarificatory or declaratory if the proviso would have been applicable to all the scheduled goods.

Thus, the last two points urged on behalf of the petitioners are not worth acceptance.

26. Before parting with this judgment, I may mention that the learned counsel for the respondent-State raised the question of maintainability of the writ application on the ground that the petitioners have alternative remedy of reference to this Court u/s 48 of the Bihar Finance Act, provision of which is applicable in terms of the provisions contained u/s 8 of the Act. The said objection was not allowed for the simple reason that the question raised was a pure question of law and was of a fundamental character and as such the writ application cannot be thrown out on the ground of availability of the alternative remedy.

27. As I have already accepted the first point urged on behalf of the petitioners, the orders passed by the assessing authorities as well as that of the Tribunal have to be set aside for the simple reason that the authorities under the Act have not considered the question as to whether the sale of hydrogenated oil having taken place in the local area was for the purpose of consumption or use as stated above or it was sold or re-exported for taking the goods to a place outside the local area. The authorities should consider that question before fixing the liability

of tax under the provisions of the Act.

28. Accordingly, the impugned orders, as contained in annexures 1 and 2 to the writ application, are quashed and the matter is remitted to the assessing authority to determine the tax liability in the light of the observation made in this judgment.

29. In the result, the writ application is allowed.

R.S. Garg, J.

I agree.