

(2011) 09 JH CK 0081
In the Jharkhand High Court
Case No : W.P (T) No. 5000 of 2011

Imperial Fastners Private Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Constitution of India, 1950 — Article 304
Jharkhand Value Added Tax Act, 2005 — Section 11, 3

Citation : (2011) 09 JH CK 0081

Hon'ble Judges : Prakash Tatia, C.J;P.P. Bhatt, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.

2. The Petitioners have challenged the provision of Section 3 of the Jharkhand Entry Tax Act on Consumption or Use of Goods Act, 2011 on the ground that a Division Bench of this Court in the case of Tata Steel Limited v. State of Jharkhand and Ors. reported in (2008) 17 VST 209 (Jharkh) has declared exactly the identical provision made by Section 11 of the Jharkhand Value Added Tax Act, 2005 as ultra vires to the Constitution after holding that prior sanction of the President as required under the proviso to Article 304(b) of the Constitution of India has not been obtained and after observing that maintaining of roads and providing bridges is not compensatory in nature so as to constitute special advantage to trade, commerce and intercourse and after detailed discussion on the issue, the Division Bench has quashed the said provision.

3. Against the aforesaid judgment of the Division Bench of this Court, a SLP has been preferred by the State, but operation of the aforesaid judgment has not been stayed. Now the State has enacted Act of 2011, which is nothing but verbatim rewriting of earlier law, which has been quashed. Therefore, the Respondent State be restrained from recovering any tax from the writ Petitioners under the Act of 2011.

4. Learned A.A.G vehemently submitted that in earlier round of litigation, it is true that the said provision of law has been struck down but SLP is pending. It is also submitted that the matter is, thus, sub-judice and cannot be said to have attained finality. It is further submitted that in earlier litigation, since the State failed to produce sufficient evidence to justify levy of the tax by showing that the amount collected is, in fact, utilized for the purpose for which it was collected, whereas presently the State has created funds.

5. Learned Counsel for the Petitioners submitted that similar provision for creation of fund was also in the earlier provision of law.

6. However, the aforesaid matter requires consideration and once the similar provision has since been struck down by a Division Bench of this Court and the matter is pending before the Hon"ble Supreme Court and the State has come up with a new Act during the pendency of this litigation before Supreme Court and prima facie, the new provision appears to be same with admitted fact that this time also assent has not been obtained under Article 304(b) and further looking to the reasons given in the earlier orders, we are of the considered opinion that the Respondent State be restrained from recovering any amount of tax from the writ Petitioners under the Act of 2011. However, the writ Petitioners shall furnish security for the amount to the State from time to time for payment of tax and interest, in case they fail to succeed in these petitions. The security be submitted within a period of three weeks from today.

7. List these cases for final hearing on 16th November, 2011, as the counsel for the Petitioners have, for valid reasons, difficulty before that day in arguing the matters, at their request, put up these cases on 12th December, 2011.