
(2004) 02 JH CK 0082

In the Jharkhand High Court

Case No : C.W.J.C. No. 766 of 1990 (R)

I.T.W. Signode India Ltd. (III) and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Bihar Finance Act, 1981 — Section 17(5), 33(1)

Central Sales Tax Act, 1956 — Section 3

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 2 JCR 385 : (2006) 144 STC 547

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

Bench : Division Bench

Advocate : S.B. Gadodia, J.N. Pandey and M.S. Mittal, for the Appellant; K.K. Jhunhunwala, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—The petitioner-company has its registered office in Hyderabad in the State of Andhra Pradesh and is manufacturing steel strap systems in collaboration with Signode Corporation, USA. It is an assessee registered under the Andhra Pradesh Sales Tax Act and the Central Sales Tax Act. The petitioner company entered into three contracts with M/s. Tata Iron & Steel Company Limited (hereinafter referred to as TISCO), located at Jamshedpur in the erstwhile State of Bihar, but now in the State of Jharkhand. The first contract was for the supply of straps, seals, tools and spare parts. According to the petitioners, straps and steels are supplied directly from Hyderabad to TISCO, Jamshedpur and the tools and spare parts are imported and supplied to TISCO from Hyderabad. It is collecting and paying tax on the sales under the Central Sales Tax Act. The petitioner has also entered into a contract with TISCO for service, examination, tests, adjustment, cleaning, oiling, etc. of the tools which are being used at the work site of TISCO. Engineers and mechanics of the petitioner-company go to the site and do the servicing. The petitioner has yet another contract called unitization contract which according to it is a service

contract consisting of all jobs of strapping of billets and other steel items which are loaded in open wagons to make it single mass of steel, so that the mass cannot move or shift during shunting or movement of wagons. The Job of unitization is done by tools which are for tensioning the strap and then sealing it. According to the petitioner, all the three types of contracts are independent of each other. The petitioner has no liability for tax in the State of Bihar under the Bihar Finance Act (now Jharkhand Finance Act), pursuant to these contracts, since in terms of the contracts, the sales are inter-State sales coming u/s 3 of the Central Sales Tax Act on which Central Sales Tax is payable and is being paid by the petitioner at Hyderabad in the State of Andhra Pradesh. Thus, the petitioner denies any liability under any of its contracts with the TISCO under the Jharkhand Finance Act. 2. The petitioner received a notice u/s 33(1) of the Bihar Finance Act stating that on verification it was found that the petitioner company was not submitting its return in relation to its works contract with TISCO. The petitioner was directed to appear before the Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur to clarify the position. The petitioner appeared before the authority and put forward its case that no intra-state sale was involved in its works contract with TISCO. It was also put forward that the petitioner was not effecting any local sales within the State of Jharkhand and was not violating any of the provisions of the Bihar Finance Act. The petitioner also produced various documents in support of its case along with a detailed written representation. On being asked to file one more complete set of transactions between the parties, the petitioner filed the said documents. After hearing the petitioner and considering the relevant materials, the Deputy Commissioner, respondent No. 2, passed an order on 31.8.1989 holding that the contracts are one and the same, that sales took place in terms of the contract at Jamshedpur and as such the petitioner was exigible to sales tax under the Bihar Finance Act and directed that proceedings u/s 17(5) of the Act be started and this was followed by a notice u/s 17(5) of the Act. It was at that stage that the petitioner filed the present writ petition challenging the order of the Deputy Commissioner marked as Annexures 6 and the notice u/s 17(5) of the Act produced as Annexure 7. The petitioner contends that there was no sale within the Bihar Finance Act taking place within the State of Bihar (now Jharkhand) and that the order, Annexure 6 holding otherwise was illegal and was liable to be interfered with. The consequent notice issued was also liable to be set aside.

3. On behalf of the respondents, it is contended that the order, Annexure 6 was perfectly legal and valid and that the title to the goods passed only within the State of Bihar, now Jharkhand, and hence the sales took place within the State and it is exigible to tax under the Bihar Finance Act. Thus, it was submitted that there was no merit in the writ petition.

4. On 18.4.1990, the writ petition was admitted and the Standing Counsel appearing for the respondents was directed to file a counter-affidavit. The matter has come up for final hearing after more than 13 years. We refer to this aspect because at the time of hearing, learned counsel for the respondents sought to

raise a contention that the writ petitioner has an efficacious alternative remedy available under the Act and the writ petition directly challenging the order passed by the Deputy Commissioner u/s 33(1) of the Act should not be entertained or was not maintainable. We are not inclined to examine or entertain this objection, since we feel that the writ petition having been admitted to hearing as early as on 18.4.1990, it would be unjust to refuse to decide the question on merits after more than 13 years of such admission. We also feel that the question involved in essentially a question of law, because the facts do not appear to be much disputed and in that situation, it would be appropriate not to accede to the argument of the existence of an alternative remedy raised by the learned counsel for the Department.

5. On an examination of the order, Annexure 6, what we find is that the Deputy Commissioner essentially proceeded on the basis that the title to the goods passed to TISCO only at Jamshedpur within the State of Bihar. That was the theme of the argument of learned counsel for the Department, before us also. But learned counsel for the petitioner pointed out that in terms of Section 3 of the Central Sales Tax Act, a sale shall be deemed to take place in the course of inter-State trade or commerce, if the sale occasioned the movement of goods from one State to another. He pointed out that the passing of the title to the goods in itself, even if the said finding is taken to be correct, is not the governing factor. He relied upon the decisions of the Supreme Court in *English Electric Company of India Ltd. v. Deputy Commercial Tax Officer* 38 STC 475 and in *Sahney Steel & Press Works Limited v. Commercial Tax Officer*, 60 STC 301 and the decision of the Patna High Court in C.W.J.C. No. 2460 of 1994 (R) to contend that once it is found that the movement of goods was occasioned by sale on purchase from the State of Andhra Pradesh to the State of Bihar, it had necessarily to be held that it was an inter-State sale coming within Section 3 of the Central Sales Tax Act. Learned counsel for the Department relying on the decision in *McDowell and Co. Ltd. Vs. Commercial Tax Officer*, argued that methods adopted for evasion of tax could not be countenanced and on lifting the veil, if the Court finds that it was really a sale within the State of Bihar, it had to be held that this was not, an inter-State sale, but an intra-State sale. We find on an examination of the order, Annexure 6 passed by the Deputy Commissioner, that the Deputy Commissioner has not properly considered the impact of Section 3 of the Central Sales Tax Act and the decisions relied on by the petitioner. The Deputy Commissioner has essentially proceeded on the basis that the title to the goods had passed within the State of Bihar. The question has to be examined afresh. Even if the said finding is correct, (we are not pronouncing one way or the other on it), it has to be considered whether it would not still be a sale coming within Section 3 of the Central Sales Tax Act in the light of various decisions on that aspect, including the decisions referred to above. Of course, the argument on behalf of the *McDowell and Co. Ltd. Vs. Commercial Tax Officer*, has also to be kept in mind. Since we feel that the matter requires a proper re-examination by the Deputy Commissioner, we feel that it will be appropriate to

quash the order, Annexure 6 and the notice (Annexure 7) and direct the Deputy Commissioner, respondent No. 2, to consider the matter afresh after giving the petitioner and the Department an effective opportunity of being heard and ensuring that the points raised on behalf, of the petitioner and the Department are specifically answered. Thus, we allow this writ petition and quash the order. Annexure 6 and the notice Annexure 7, and remit the proceedings to the 2nd respondent. Deputy Commissioner, for a reconsideration of the question involved and to pass a fresh order after hearing both the parties and in accordance with law. We direct the parties to suffer their respective costs. So as to enable an expeditious disposal, we direct the petitioner to appear before the Deputy Commissioner on 05.04.2004, on which date a date for hearing will be fixed by the said respondent.