

(2012) 08 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (T) No. 7206 of 2011

Jai Bajrang Enterprises and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 07-08-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 18, 8, 8(1), 9
Constitution of India, 1950 — Article 246, 246(1)
Jharkhand Value Added Tax Act, 2005 — Section 2, 8

Citation : (2012) 54 VST 331

Hon'ble Judges : Prakash Tatia, C.J.; Jaya Roy, J

Bench : Division Bench

Advocate : Rajesh Lala and P.K. Lala, for the Appellant; Ajit Kumar, A.A.G. and Kumar Sundaram, J.C. to A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. This writ petition has been filed by 25 (twenty five) petitioners, who are registered traders of coke and/or are dealing with the coal purchased from the subsidiaries of Coal India Ltd. and from other coal dealers/units. The petitioners are registered dealers under the Central Sales Tax Act, 1956 and also are registered dealers under the Bihar Finance Act (Act of 5 of 1981) and then also registered dealers under the Jharkhand Value Added Tax Act, 2005. The petitioners are paying the tax as collected under the Central Sales Tax Act, 1956 to the State of Jharkhand upon every transaction for the inter-State trade and are also paying tax to the State of Jharkhand under the provisions of the Jharkhand Value Added Tax Act, 2005. The coal/coke is a declared goods u/s 14 of the CST Act and as such the petitioners make payment to the State Government at the time of purchase of run of mines (R. O. M.) coal from the subsidiaries of Coal India Ltd. or from other coal dealers/units. According to the petitioners, as per the provisions of the Central Sales Tax Act, 1956 there is no restriction imposed upon registered dealers to trade with unregistered dealers by other State, only the rate of tax leviable is higher in

course of inter-State trade falling under sub-section (1) of section 8 of the CST Act. The petitioners also submitted that under the Jharkhand Value Added Tax Act, 2005, by section 18, input-tax credit has been given and earlier as per the sub-clause (ii) of sub-section (4) of section 14, the input-tax credit was allowable on the purchase of goods made within the State of Jharkhand from the registered dealers holding a valid certificate of registration and which are intended for the purpose of sale in course of inter-State trade and commerce. However, the State of Jharkhand has imposed tax by substituting new clause in place of original clause (ii) of sub-section (4) of section 18 by inserting :

Sale in course of inter-State trade and commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956 (74 of 1956).

2. According to the learned counsel for the petitioners, by insertion of "falling under sub-section (1) of section 8 of the CST Act, 1956", the State has put restrictions against the inter-State sales which is a subject falling under entry 42 of the Seventh Schedule to the Constitution of India and also is falling under List I (Union List). According to the learned counsel for the petitioners, the Parliament has exclusive power to make laws with respect to any of the matter enumerated in List I of the Seventh Schedule which is a Union List. Therefore, in view of the entry 42 read with article 246(1), the tax can be imposed only by the Parliament and not by the State legislation. Therefore, the State Government exceeded in its jurisdiction and has illegally imposed tax on the subject covered under article 246(1) read with List I of the Seventh Schedule.

3. The learned counsel for the petitioners submitted that by virtue of this insertion, if the petitioners will sell the goods to any unregistered dealer, then they will not be entitled to the input-tax credit. It is submitted that if the petitioners purchase the commodity of Rs. 5 and added value of Rs. 3 in that and will sell the commodity in the course of inter-State trade, then they will have to pay the tax on Rs. 8 if the sale is not to a registered dealer under the Central Sales Tax Act, 1956, thereby, it is a restriction against the trade.

4. The learned counsel for the State submitted that the Jharkhand Value Added Tax (Amendment) Ordinance being Ordinance No. 2 was notified in the Official Gazette vide S. O. No. LJ-10/2001-54/LEG dated May 7, 2011, whereby several amendments were carried out in the Jharkhand Value Added Tax Act, 2005. By section 9 of the said Ordinance, section 18(4) of the Jharkhand Value Added Tax Act, 2005 has been amended by substituting clause (ii) of sub-section (4) of section 18 by the phrase, which we have already quoted. The Ordinance was placed before the State Legislative Assembly and it has been passed by the State Legislative Assembly and thereafter it was placed before the honourable Governor who has given assent on September 28, 2011.

5. It is submitted that by above substitution, no restriction has been imposed upon the dealers against the trade with unregistered dealers of other States. Therefore, it is submitted that amended section 18(4)(ii) is not repugnant and

incompatible with CST Act, but only restrict the benefit of input-tax credit to inter-State sales made to registered dealers of other States registered u/s 8(1) of the CST Act. In view of the section 18(4)(ii) of the Act of 2005, as amended by the Ordinance, the petitioners will be liable to deposit the entire CST realized by them from unregistered dealers/persons of other States with the Government of Jharkhand. It is also submitted that in the Act of 2005, tax is not levied at total value of the commodity, and therefore, the contention of the petitioners is incorrect. The tax is to be realized by the dealers on total amount of sale value which is called output tax but the dealers are allowed to deduct tax paid at the time of the purchase (input tax) from output tax and pay the differential amount of the tax to the Government. However, such input-tax credit is not allowable in the circumstances mentioned in the clause 18(8) of the Act. According to the learned counsel for the petitioners, the provision has been made to augment the revenue of the State and to bring transparency in trade so that the dealers deal with registered dealers within or outside the State to claim input-tax credit.

6. The learned counsel for the petitioners relied upon the judgment of the Supreme Court delivered in the case of *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, . Learned counsel for the petitioners submitted that taxing statute can be challenged on the ground that it infringes the fundamental rights guaranteed by the Constitution if it purports to impose restriction on the same class of persons ; similarly situated, on incidence of taxation which leads to obvious inequality. However, in this very judgment, the honourable Supreme Court held that the plea of colourable legislation can succeed only when the relevant circumstances are strong enough to justify that it amounts to a fraud.

7. We have considered the submissions made by the parties and perused the relevant provisions of law.

8. So far as the article 246 and its effect is concerned, there is no dispute and it is clear from article 246(1) that, to legislate on the subjects enumerated in List I of the Seventh Schedule, i.e., the Union List subjects, only the Parliament has exclusive power to make the laws. The entry 42 in the Seventh Schedule to the Constitution includes the matter relating to inter-State trade and commerce. The State Government has not imposed any tax on any transaction on inter-State sale which is apparent from the Jharkhand Value Added Tax Act, 2005. The Jharkhand Value Added Tax Act, 2005, provides to consolidate the law relating to the levy of value added tax on sales or purchase of goods and on entry of goods on local area in the State of Jharkhand and to collect funds for the purpose of development of trade, commerce and industries of the State.

9. So far as the State's power to enact the law relating to levy of value added tax on sales or purchase on goods and on entry of goods into the local area in the State of Jharkhand is concerned, it is not being questioned. The "assessee", "dealer", "input", "input tax", "output tax", etc., have been defined in various clauses u/s 2 of the Act of 2005. The incidence of tax has been given u/s 8 of the

Act of 2005 and the State Government's power to legislate on subject of levy of tax in Chapter III of the Act of 2005 is also not under challenge. What is under challenge is, the withdrawal of credit given on the basis of input tax. Therefore, from the facts itself it is clear that the State has not imposed the tax but has granted some concessions in the matters of the tax levied under the Act of 2005.

10. At the cost of repetition, we may mention here that the imposition of the tax under the Act of 2005 is not under challenge but in fact, under some misconception, when the State Government decided to proceed to take a decision that certain incentives be given to the traders who deal with the registered dealers, then the petitioners have approached this court by challenging the validity of sub-clause (ii) of sub-section (4) of section 18 of the Act of 2005 as amended by the impugned Ordinance. The different treatment has already been given by the Central Sales Tax Act, 1956 by framing the sub-section (1) of section 8 of the Central Sales Tax Act, which also provides that every dealer who in the course of inter-State trade or commerce as well as sales to a registered dealer goods of the descriptions referred in sub-section (3) shall be liable to pay the tax under the Central Sales Tax Act, 1956, and therefore, the registered dealer, for the purpose of sub-section (1) of section 8 itself is a clause as has been made by the statutory provisions. The State has decided to encourage the trade with the registered dealers under the CST Act by giving some credit known as input-tax credit and has not levied any tax or penalty upon the petitioners on their entry to trade with the unregistered dealers. Therefore, from the impugned substitution of sub-clause (ii) of sub-section (4) of section 18, neither the State Government has levied some additional tax on the subject-matters covered under the article 246(1) nor has put any restrictions against the trade by the petitioners with unregistered dealers. Therefore, the petitioners' challenge to substituted provisions of sub-clause (ii) of sub-section (4) of section 18 of the Jharkhand Value Added Tax Act, 2005, by the impugned Ordinance Act is misconceived.

11. So far as the judgment which has been relied upon by the learned counsel for the petitioners delivered in Jagannath Prasad case Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, by the honourable Supreme Court is concerned, in that matter the dispute was entirely different. This was a matter arising out of the U. P. Large Land Holding Tax Act, 1957 (U. P. Act of 31 of 1957) and a question involved in the said case of Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another, was answered while dealing with the various provisions of said Holding Act of 1957, which are neither similar nor they have any connection with the present dispute and particularly when the State Government's power to legislate for value added tax is not under question and its validity is not under challenge, then a question of giving the concessions under the Act is a dispute in this case which has been interpreted by the petitioners as levying of the tax on the subject-matters covered under the article 246(1) read with List I in the Seventh Schedule, and that is factually wrong. Consequentially, the writ petition of the petitioners is dismissed.