

(2007) 07 JH CK 0013
In the Jharkhand High Court

K.I.C. Metaliks Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-07-2007

Acts Referred:

Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 — Section 3

Citation : (2007) 4 JCR 153 : (2007) 10 VST 579

Hon'ble Judges : M.Y. Eqbal, J; Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard the counsel for the parties.
2. In this writ application the petitioner seeks direction upon the respondents to refund a sum of Rs. 81,75000/- to the petitioner which was deposited by it by way of entry tax under protest between the period 30.7.2003 to 17.3.2004 together with interest. The said entry tax was deposited under the provisions of The Bihar Taxes on Entry of Goods into Local Areas (for Consumption, Use or Sale Therein) Act, 1993.
3. The petitioner challenged the vires of the aforesaid Act by filing WPT No. 2937/2003. The writ petition was listed before II Division Bench and it was admitted on 9.7.2003. By order dated 4.8.2003 the Division Bench ordered that payment of tax, if any, made by the petitioner shall be subject to result of the writ petition. The writ petition was finally heard by the Division Bench of this Court and judgment was delivered on 23.8.2006 whereby Section 3 of the said Act including the amendment made therein was declared ultra vires and it was held that the respondents cannot enforce the provisions of the said Act.
4. After the aforesaid judgment was passed, the petitioner approached the respondents for refund of the amount. When the amount was not refunded by the respondents, the instant writ application has been filed seeking direction for

refund of the amount together with interest.

5. Pursuant to order passed by this Court a counter-affidavit has been filed wherein it is stated that the Division Bench judgment declaring the provisions of the aforesaid Act ultra vires, shall have prospective effect and, therefore, the petitioner is not entitled to refund of the said amount. It was further contended that the amount deposited by the petitioner is hit by the principles of unjust enrichment as laid down by the Supreme Court in Mafatlal Industrie's case.

6. The only question that falls for consideration is as to whether the aforementioned amount deposited by the petitioner by way of entry tax, can be termed as "collected from the consumers". It has been categorically stated in para 19 of the writ petition that the petitioner has neither realised any portion of the aforesaid amount from its consumers on the sale of finished products nor has it passed on the burden of the said amount in any manner whatsoever upon any body whomsoever. A very cryptic and vague counter-affidavit has been filed wherein this specific statement made in para 19 of the writ petition has not been controverted.

7. In that view of the matter and also having regard to the interim orders passed on 9.7.2003 and 4.8.2003 passed in WPT No. 2973/2003 coupled with the statement made in para 19 of the writ petition having not been controverted, we have no option but to allow this writ application and directed respondents to refund the aforesaid amount together with interest.

8. This writ petition is, therefore allowed and the respondents are directed to forthwith return the amount collected by them from the petitioner together with interest @ 6% p.m. The said amount together with interest shall be refunded within four weeks from today.