

(1996) 10 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 3900 of 1985

Modi Steels Limited and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Citation : (1996) 10 PAT CK 0028

Judgement

D.P. Wadhwa, C.J.—By this petition under Article 226 of the Constitution, the Petitioners, a public limited company and engaged in manufacture of cable tapes, metal box, strappings, etc., seek a writ/order/direction to the Respondents to act in pursuance of the notification No. S.O. No. 639 dated April 16, 1982 read with Notification No. S.O. 1145 dated December 31, 1980 issued by the Respondents. The Petitioners seek quashing of the Circular dated August 10, 1983 issued by the Commissioner of Commercial Taxes disallowing the Petitioners from claiming any adjustment to which the Petitioners were entitled to in terms of the Notification aforesaid.

2. The Petitioner company is a registered dealer under the provisions of the Bihar Finance Act, 1981 (for short "the Act") and the Central Sales Tax Act, 1956 (for short "the C.S.T. Act"). It is stated, that the State Government in order to give incentive to the industrial unit, formulated a scheme to give incentive by way of claim of set-off of the tax paid on the purchase of raw material within the State against the sales tax payable on the sale of finished products, in pursuance, of the scheme, the State Govt. issued Notification No. 1145 dated December 31, 1980, permitting every registered dealer, who is a manufacturer and is running an industrial unit to adjust the amount of sales tax paid on the purchase of raw materials used in the manufacture of goods for sale against the tax payable on the sale of finished products in the State of Bihar. This Notification was directed to come into force with effect from October 1, 1979 and remaining in force till March 31, 1984. It is stated that the Petitioner-company became entitled to incentive on issue of a certificate by the Director of Industries, Government of Bihar, addressed to the Deputy Commissioner of Commercial Taxes, Patna

certifying that the Petitioner-company was entitled to claim of set-off and directing to grant such claim of the Petitioner-company. The State Government issued another Notification No. S.O. 639 dated April 16, 1982 u/s 23(1) of the Act, permitting an industrial unit, like the Petitioner, to adjust the amount of tax paid on the purchase of raw materials in the State and used in the manufactures of goods for sale in course of inter-State trade and commerce against the tax payable in the said part as per procedure prescribed. The procedure was the same as applicable as per the Notification No. 1145 dated December 31, 1980. Another Notification No. 128 dated January 27, 1983 was issued under Sub-section (1) of Section 23 of the Act whereby the State Government, directed that the Notification No. S.O. 639 dated April 16, 1982 would be deemed to have come into force with effect from October 1, 1979. Since the controversy in the present case evolves on the interpretation of Notification No. S.O. 639 dated April 16, 1982, it would be appropriate to set out the same herein:

"ORDER"

The 16th April, 1982

1. S.O. 639. - In exercise of the powers conferred under Sub-section (1) of Section 23 of Part I of the Bihar Finance Act, 1981 (Bihar Act No. 5, 1981) the Governor of Bihar, on being satisfied that it is necessary to do so in the interest of the Industrial growth, is pleased to permit an industrial unit established as per procedures and conditions laid down in Finance (Commercial Taxes) Department Order No. Section 0.1145, dated 31st December, 1980 and registered under the aforesaid Part, to adjust the amount of tax paid on the purchase of raw materials in the State and used in the manufacture of goods for sale in course of inter-State trade and commerce against the tax payable under the said part, in the manner so prescribed.
2. The procedure laid down in Finance (Commercial Taxes) Department Order No. S.O.1145, dated 31st December, 1980 for adjustment of tax shall also be applicable in the same manner for adjustment under this Order.
3. This order shall be deemed to have come into force with effect from 1st April, 1982.

By order of the Governor of Bihar

B.P. Verma, Commissioner of Commercial Taxes and Special Secretary to Government, Finance Department, Bihar, Patna.

3. The Petitioner-company then goes on to say that for the two years, 1982-83 and 1983-84, it paid purchase tax of Rs. 9, 26, 299.78 and Rs. 4,38,787.55 respectively and as such, it claims to be entitled to set-off to the extent of the purchase tax paid against its liability under the Act and the C.S.T. Act. The Petitioners say that for the year 1982-83 an amount of Rs. 87,006.95 became payable as sales tax under the Bihar Sales-tax Act and with respect to Central Sales- tax the amount was Rs. 1,92,419.56 paise. Though the Assessing Officer

allowed adjustment of the amount of sales-tax under the Bihar Sales-tax Act and declined the claim of the Petitioner-company for set-off under the Central Sales-tax Act, a liability of Rs. 1,92,419.56 paise was created against the Petitioner-company as Central sales-tax. Similarly for the year 1983-84, while set-off of the amount of Rs. 3,15,531.66 paise was allowed as sales-tax under the Bihar Sales-tax Act against the purchase tax paid by the Petitioner, an amount of Rs. 2,08,570.12 paise as Central sales-tax was disallowed to be set-off against the purchase tax paid by the Petitioner-company.

4. By letter dated May 28, 1985, the Petitioner-company was called upon to pay Central sales-tax for the years 1982-83 and 1983-84 amounting to Rs. 1,92,200.24 and Rs. 1,92,419.56 respectively. It is stated that the Petitioner-company came to know that the refusal of claims of set-off of the Petitioner-company was on account of Circular No. 5852 dated August 10, 1983 issued by the Commissioner of Commercial Taxes to all the subordinate officers in which it was directed that the claim of set-off was not available against the sales made in course of inter-State transactions on which Central-sales tax is leviable. The Petitioner-company is challenging this circular being illegal as against the Notification No. S.O. 639 dated April 16, 1982. The Petitioner-company has challenged the power of the authority under the Bihar Sales-tax Act depriving its right to claim set-off both under the local Act and Central Sales-tax Act. It has been submitted on behalf of the Petitioner-company that Notification No. S.O. 639 dated April 16, 1982, speaks about the adjustment of the tax paid on purchase made in the State of Bihar to be adjusted towards the sale of the finished products in course of inter-State trade and commerce.

5. The stand of the Respondents is that no adjustment could be granted in respect of tax paid on the purchase of raw materials which has been sold in course of inter-State trade against the tax liability of that sale and it was adjustable only against the sale made inside the State of Bihar and that the claim is wholly illegal and contrary to the Notification aforesaid. It is then submitted that the Respondent-State which collects the tax under the Central Sales tax Act could not grant claim of set-off as per the Notification No. S.O. 639 dated April 16, 1982.

6. The Respondents, the first being the State of Bihar, the second the Commissioner of Commercial Taxes and the third the Deputy Commissioner of Commercial Taxes have not filed any counter-affidavit to rebut the case set up by the Petitioner-company. Mr. Agrawal, learned Counsel appearing for the Respondents submitted that there is no necessity to file counter-affidavit, as interpretation of the Notification and provisions of the Bihar Sales-tax Act and Central Sales-tax Act is involved in this application.

7. The main question that arises for consideration is if the State Government under the Notification dated April 16, 1982 under Sub-section (1) of Section 23 of the Act could provide to adjust the amount of tax paid on the "purchase of raw materials in the State and used in the manufacture of goods for sale in course of

inter-State trade and commerce against the tax payable under the said part...." The weight of the argument of the Petitioners was that under this Notification the Central sales-tax payable on inter-State sale could be adjusted against the local tax paid on purchase of raw materials under the Act. Section 23(1) of the Act provides as under:

23. Adjustment, set off, or refund of tax in certain cases.-

(1) Where the State Government is satisfied that it is expedient to do so in the interest of industrial growth within the State, it may permit, by an order published in Official Gazette, any dealer, or class or description of dealers, who are running industrial units in the State of Bihar, to adjust the amount of tax paid on the purchase of raw materials which have been used for manufacture of goods for sale in course of inter-State trade against the tax payable under this part in such manner and subject to such conditions and restrictions as may be laid down in the order allowing permission.

(2) Where due to any reason it may not be possible to adjust the amount of tax paid on raw materials used for manufacture of goods for sale in course of inter-State trade in the manner specified in Sub-section (1), the State Government may, by an order published in Official Gazette, and subject to such conditions, restrictions, and manner, as may be laid down in the order permit the refund of the amount, if any, paid on purchase of such raw materials but not adjusted against the tax payable under this part.

Sub-section (1) of Section 23 of the Act uses the words "tax payable under this part". If we look at the contents of the Act, separate parts have not been given but then the Act has been divided otherwise in two parts like; (1) Levy of tax on the sale and purchase of goods in Bihar, (2) Incidence and levy of tax, (3) Tribunal and Taxing Authorities, (4) Point of levy, rate and concessional rate, (5) Registration of Dealers, (6) Return, assessment, escaped assessment, taxable turnover and recovery of tax, (7) Maintenance of Accounts, inspections, search and seizure, etc. Section 23 of the Act falls in the part relating to "return, assessment, escaped assessment, taxable turnover and recovery of tax". Central Sales-tax is not payable under this part for inter-State sale. We, therefore, have not been able to appreciate the argument of the Petitioners that the tax paid on the purchase of raw materials as per local law could be adjusted against the Central sales-tax leviable in course of inter-State trade. When Sub-section (1) of Section 23 of the Act itself is not applicable, Sub-section (2) of Section 23 of the Act would also be not applicable. At some stage, we were impressed with the argument that the amount of tax paid on the purchase of raw materials could not be adjusted under Sub-section (1), the Petitioner-company would be entitled to refund of that much amount but that would not be so. Sub-section (2) will come into operation only when Sub-section (1) would not provide the relief. When Sub-section (1) itself is not applicable, Sub-section (2) cannot be in aid to that.

8. Mr. Pawan Kumar, learned Counsel for the Petitioner-company tried to rely on

Sub-Section 2-A of Section 8 of the Central Sales-Tax Act and the Explanation thereto which is as under:

(2-A) Notwithstanding anything contained in Sub-section (1-A) of Section 6 or Sub-section (1) or Clause (b) of sub-Section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales-tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four percent (whether called a tax or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purpose of this Sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales-tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

We do not think that this provision is at all applicable in the present case, as the plain language of the definition would show. Reliance on this provision is of no help to the Petitioners.

9. Reference was made to the decision of the Supreme Court in the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . That case was under the Karnataka Sales Tax Act. Under an incentive scheme certain incentives were given to entrepreneurs starting new industries in the State. The Court said that the benefit which was granted by way of refund of sales-tax paid on the purchase of raw materials was, in fact, in the nature of an exemption and that the central scheme was ultra vires of Section 8A of the Karnataka Sales Tax Act. Section 8A empowers the State Government to notify exemption and reduction in the levy of tax on sale or purchase of goods that were made exigible under the provisions of the Act. Again we see, this decision is of no help to the Petitioners. Section 9 of the Central Sales-Tax Act provides for levy and collection of tax. Under this section Central sales-tax is to be levied by the Government of India and the tax so levied shall also be collected by the Government of India. It is only the machinery of the local Act that would be used for collection of tax. Further argument that the Central sales-tax collected in the State is ultimately passed to that very State is no argument to advance the case of the Petitioners. We have only to see if under the Notification dated April 16, 1982, the Petitioner-company could seek adjustment of the tax paid under the local law on the purchase of raw materials against the Central sales-tax paid in course of inter-State sale. As a matter of fact, the Notification does not talk of Central sales-tax at all but only refers to tax payable under part 6 of the local Act as aforesaid which is State tax. To repeat under Sub-section (1) of Section 23 of the local Act adjustment of the amount of tax paid on purchase of raw materials would be obtained against the

tax payable under the local Act if the raw material so purchased has been used for the manufacture of goods for sale in course of inter-State trade. This Section 23 can be construed with Section 22 of the Act under which adjustment of the amount of tax paid on the purchase of raw materials used for manufacture of goods for sale within the State against the tax payable on sale of finished products in the State has been allowed only to dealers running manufacturing unit in the State. The adjustment both under Sections 22 and 23 of the Act can be allowed again subject to certain other conditions and restrictions that might be imposed. We are not concerned for the time being with any such other conditions or restrictions. Sub-section (2) of Section 23 of the Act would not be applicable as the case of the Petitioners does not fall within the provisions of Sub-section (1) of Section 23 of the Act.

10. Accordingly, we hold that the Petitioner-company is not entitled to any adjustment of tax paid on the purchase of raw materials under the Bihar Finance Act against the Central sales-tax payable under the Central Sales-Tax Act. In this view of the matter, the Circular dated August 10, 1983 issued by the Commissioner of Commercial Taxes cannot be held to be invalid. This writ application fails and is, therefore, dismissed. Rule is discharged. No costs.

S.J. Mukhopadhaya, J.

11. I agree.