(1999) 09 PAT CK 0038

In the Patna High Court

Case No : C.W.J.C. No. 9564/97

M/s Bharat Sugar Mills APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:
Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 — Section 49(1)(b)

Citation : (1999) 3 PLJR 714

Hon'ble Judges : B.N. Agrawal, Acting C.J.;S.K. Chattopadhaya, J

Bench : Division Bench

Advocate : Y.V. Giri, D.K. Dubey, Jyoti Sharan and Sanjay Kumar Giri, for the Appellant; A.N. Singh in 9564, 4713, 7864, 7876, 7878, 7882, 7886, 7891, 7892, 7893, 7946, 7947, 7948, 7950, 7951 and 7952, O.P. Agrawal in 6100, V.N. Sinha in 5406 and 5407, S.J. Rahman in 5407, 5421, 5422, 5423, 7590, 7640, 7663, 7666, 7673, 7816, 7821 and 7949 and S.R. Ahmad in 9231, 9236 13111, 11082 and 11083, for the Respondent

Judgement

B.N. Agrawal, ACJ & S.K. Chattopadhaya, J.—Heard the parties. Though some of the cases have been admitted for final hearing and some cases are yet to be heard on the admission matter, Learned Counsel for both the parties agreed that as the point involved in all the cases has now been settled by the Supreme Court in the case of Govind Sugar Mills Ltd. vs. State of Bihar and Others : Civil Appeal Nos. 2611-13 of 1997 disposed of on 17th August, 1999 (1999(3) PLJR (SC), 166 all these cases may be disposed of in the light of the said Supreme Court judgment at this stage.

2. There are three categories of cases in which different reliefs have been prayed for. In first category of cases, namely, C.W.J.C. Nos. 9564 of 1997, 6100 of 1997, 9713 of 1999, 9231 of 1993, 9236 of 1993, 13111 of 1992, 11082 of 1992 and 11083 of 1993 the assessment orders of the respective years have been challenged by the petitioners. In second category of cases, namely, C.W.J.C. Nos. 5406 of 1999, 5407 of 1999, 5421 of 1999, 5422 of 1999, 5423 of 1999, 7584 of 1999, 7640 of 1999, 7662 of 1999, 7816 of 1999, 7821 of 1999, 7892 of 1999,

7946 of 1999, 7947 of 1999, 7948 Of 1999, 7949 of 1999, 7950 of 1999, 7951 of 1999 and 7952 of 1999 the petitioners have challenged the assessment orders and have further prayed for refund of the amount of tax already deposited and in third category of cases, namely, C.W.J.C. Nos. 7878 of 1999, 7891 of 1999, 7890 of 1999, 7666 of 1999, 7673 of 1999, 7864 of 1999, 7876 of 1999, 7882 of 1999, 7886 of 1999 and 7893 of 1999 the petitioners have prayed for refund of the amounts paid by them as advance tax.

3. In all the aforesaid writ applications, the point for consideration is as to whether the State of Bihar can levy and collect the purchase tax on the sugarcane purchased by the petitioners, both under the provisions of Bihar Finance Act, 1981 (for short ''the Finance Act'') as well as Bihar Sugarcane (Regulation of Purchase) Act, 1981 (for short ''the Sugarcane Act'').

4. In the case of Govind Sugar Mills Ltd. (supra), in which the facts are similar to the instant applications, the same point was raised and it was contended by the appellant that the State legislature having once provided for the levy of purchase tax under the Sugarcane Act, cannot impose the same levy under the Finance Act. The following points fell for consideration before their Lordships of the Supreme Court:

(a) Whether the two Acts under reference operate in the same field? If so, which one of the two Acts is a special Act?

(b) Is the Sugarcane Act an enactment intended solely for the purpose of regulation of supply, production and distribution of sugarcane and the collection of purchase tax under the said Act is only incidental for the purpose of creating a fund for maintenance and functioning of the Board and the Council under the said Act?

(c) Whether the levy under the Sugarcane Act is only a fee for the services rendered?

5. After considering various provisions of both the Acts, the Apex Court held that both the Finance Act and the Sugarcane Act operate in the same field and, therefore, the Sugarcane Act, being a special Act pertaining to all aspects of the control of Sugarcane as well as levy of purchase tax, the same will have to be construed as a special enactment with reference to sugarcane. According to their Lordships, the rule "general provision should yield to special provision" is squarely attracted.

6. The Apex Court also rejected the submissions made on behalf of the State that the collection of purchase tax under Sub-section 1(b) of Section 49 of the Sugarcane Act is for the purpose of creating the fund for the exclusive use of the Board and the Council created under the said Act. It also negatived the argument of the appellant-State that the amount collected under Sub-section 3(b) of Section 49 of the Sugarcane Act is in fact not a tax but a fee for the services rendered by the Board and the Council under the Sugarcane Act. Having held

thus, their Lordships allowed the appeals by setting aside the judgment and order of this Court with all consequential reliefs.

7. Learned Counsel for the State fairly submitted that in view of the aforesaid decisions of the Supreme Court, the State cannot levy and collect purchase tax on the sugarcane both under the Sugarcane Act as well as under the Finance Act. He also could not point out any difference between the facts of the present cases and those in Govind Sugar Mills Ltd., case (supra). In the result, these applications are allowed. The impugned assessment orders passed and demand notice issued in first category of cases, namely, C.W.J.C. Nos. 9564 of 1997, 6100 of 1997, 4713 of 1999, 9231 of 1993, 9236 of 1993, 13111 of 1992, 11083 of 1993 are quashed. In second category of cases, namely, C.W.J.C. Nos. 5406 of 1999, 5421 of 1999, 5422 of 1999, 5423 of 1999, 7582 of 1999, 7640 of 1999, 7662 Of 1999, 7816 of 1999, 7821 of 1999, 7892 of 1999, 7946 of 1999, 7947 of 1999, 7948 of 1999, 7949 of 1999, 7950 of 1999, 7951 of 1999 and 7952 of 1999 the impugned assessment orders are quashed and the Respondents are directed to refund the amounts to the petitioners, which were deposited by them pursuant to the notice given. In third category of cases, namely, C.W.J.C. Nos. 7878 of 1999, 7891 of 1991, 7590 of 1999, 7666 of 1999, 7673 of 1999, 7864 of 1999, 7876 of 1999, 7882 of 1992, 7886 of 1999 and 7893 of 1999 the Respondents are directed to refund the amounts of advance tax to the petitioners, if already paid. All the aforesaid amount must be refunded within three months from today.