(2006) 01 PAT CK 0090

In the Patna High Court

Case No : CWJC No. 9242 of 2005

M/s Salasar Coal Services Ors. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Citation : (2006) 1 PLJR 601

Hon'ble Judges : J.N. Bhatt, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.D. Sanjay, Suraj Samdarshi and Gautam Kejriwal, for the Appellant; R.K. Datta for the State and Mr. Dhruba Mukherjee for Respondent No. 2 and Mr. V.K.M. Sinha, for the Respondent

Judgement

1. In both the writ petitions common question is involved pertaining to refund of the amount paid to the authority, therefore, they are being disposed of by this common judgment. The petitioners are companies. They are manufacturing soft coke from coal by adopting the technology of Central Fuel Research Institute. They have also been granted permanent registration as small scale industries. Pursuant to the notification No. S.O. 478 dated 22.12.95 the companies claimed exemption from payment of sales tax on purchase of raw materials relying on exemption certificates.

2. The companies have been making purchases of coal from respondent No. 3, Central Coalfields Limited (C.C.L.) without payment of sales tax. However, upon bifurcation of the united Bihar State into Jharkhand and Bihar the procedure continued before the bifurcation with regard to exemption from payment of sales tax on purchase of raw materials. The petitioners-companies continued to purchase coal as per the requirement from respondent No. 3. However, it has been alleged that the petitioners-companies have been exempted from payment of sales tax with effect from 15.11.2000 and exemption certificates have been granted, the respondent-authorities are coercing them for payment of sales tax.

3. Some of the companies had questioned such an action of coercive recovery of

sales tax despite the exemption notification and certificates by filing writ petition being C.W.J.C. No. 15830 of 2001, which came to be decided alongwith other applications by this Court by virtue of judgment dated 2.4.2002 in L.P.A. No. 240 of 2002. Ed.--Reported in 2002 (3) PLJR 334 The Division Bench allowed the writ petitions holding that the petitioners are not liable to pay sales tax on purchase of coal.

4. The decision of the Division Bench was questioned by respondent No. 2, the Jharkhand State, before the Hon''ble Apex Court by filing SLP No. 13401/2003 (Civil appeal No. 3035/2004), which is now reported in The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others, . The petitioners, therefore, moved the concerned authorities for refund of the sales tax amount illegally realised from them. However, there was no compliance of the order.

5. The decision of the Division Bench was also questioned in SLP Thus, the S.L.P came to be dismissed.

6. The copy of the orders of the writ and the SLP are placed on record. In similar case this Court has also allowed the writ petition for the refund of the sales tax amount unauthorisedly recovered from the companies.

7. In these two petitions similar question has arisen. The prayer of the petitioners-companies in this group of two petitions has been to direct the respondents to refund the amount collected as tax unauthorisedly despite there being exemption and also exemption certificates in favour of the companies. It is alleged that respondent No. 3, Central Coalfields Limited has recovered the amount of sales tax unauthorisedly and, therefore, refund is claimed and, since the claim for refund was decided against the petitioners-companies, hence, these writ petitions.

8. During the course of hearing of the petitions it was desired by the Court to place on record by the petitioning company to the effect whether they had passed on the burden of sales tax or the incidence of the sales tax on the consumers or not. In that view of the matter, the companies have filed affidavits through their Managing Director and Proprietor, in two petitions, inter alia, highlighting that the incidence of the sales tax or the burden of such sales tax sought to be refunded has not been passed on to the consumers or any other person. Therefore, the earlier decisions in similar matters are squarely attracted to the facts of the present case. Not only that, the learned counsel appearing for the parties have, after filing the affidavit by the petitioners regarding non-passing of such an incidence of sales tax to the consumers, have consensually submitted that the petitioners are entitled to be refunded.

9. It is, therefore, directed that the amount of sales tax shall be refunded by respondent No. 3 to the petitioners within a period of two months from today. It has been submitted by the learned counsel for the petitioners that the other companies covered by such decisions have not yet received refund despite

adjudication by this Court long before.

10. This is really very unfortunate to find such state of affairs of unauthorised recovery of the sales tax by coercive methods and when it has been noticed by the Court and directions are issued for the refund within stipulated period no such directions are being complied putting the petitioners to a great loss. It is, therefore, directed that such amount should be refunded within stipulated time.

11. It is apprehending that in such a situation despite the direction of the Court for payment, the respondents-authorities did not respond and comply the directions of the Court. In these cases, the respondent No. 3 is directed to refund the amount of sales tax within a period of two months and, if not paid within that time, we further direct that the amount of refund shall carry the interest of 6% per annum till the payment is made after expiry of two months'' period, from the equity point of view as well as in larger interest of justice. With these observations and direction, the petitions shall stand disposed of. Let a copy of the order be given to the counsel for the parties.