

(2014) 01 SC CK 0023
In the Supreme Court Of India
Case No : C.A. No. 4024 of 2004

M/s. Steel India

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:

Bihar Finance Act, 1981 — Section 7(3)
Central Sales Tax Act, 1956 — Section 14, 2
Constitution of India, 1950 — Article 226, 227

Citation : 2015 (13) SCC 390 = 2014 (1) SCALE 420

Hon'ble Judges : Sharad Arvind Bobde, J;H.L. Dattu, J;Dipak Misra, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order passed by the High Court of Judicature of Jharkhand at Ranchi in Writ Petition No. 4646 of 2002, dated 08.01.2003. By the impugned judgment and order, the High Court has confirmed the orders passed by the Commissioner of Commercial Taxes, Jharkhand in Revision Case No. CC(S) 388 of 2001. The State of Bihar has introduced Industrial Incentive Policy, 1993, where a provision is made to grant sales tax exemption on purchase of raw materials for certain industries enumerated in Annexure V(2) of the said policy on the condition, that, the raw materials re directly used for manufacturing finished goods. One of the units mentioned in Annexure V. is iron and steel based industry.

2. Pursuant to the aforesaid industrial policy, the State Government in exercise of its powers u/s 7(3)(b) of the Bihar Finance Act, 1981 (for short 'the Act') has issued Notification No. 1995 dated 04.04.1994, whereby the State Government has granted exemption from payment of sales tax on purchase of raw materials used directly in the manufacture of goods. The exemption granted under the aforesaid Notification is for 46 different categories of industries including iron and steel industry. The exemption under the said Notification is available for a period

of 7 years from the date of commencement of the commercial production.

3. To avail the benefit under the aforesaid Notification, the Appellant-industry had approached the Deputy Commissioner of Commercial Taxes, Dhanbad Circle, Dhanbad for the grant of exemption inter alia for three commodities (1) pencil ingots, (2) sheets (3) agricultural and household implements. The aforesaid Commissioner after considering the application so filed by the Appellant had issued a certificate in form B-I, dated 30.04.1997. In the said certificate it is clearly stated that the raw materials that are exempted from sales tax are "all types of iron and steel material (including defective cutting and rejects)."

4. The Joint Commissioner of Commercial taxes being of the opinion that the Deputy Commissioner of Commercial Taxes was not justified in granting the exemption certificate dated 30.04.1997, had initiated suo moto proceedings under the Act, by issuing a show cause notice to the Appellant, inter alia, directing the Appellant to show cause as to why the certificate issued by the Deputy Commissioner of Commercial Taxes should not be revoked.

5. After receipt of the reply by the Appellant, the Joint Commissioner of Commercial Taxes (Admn.) by his order dated 15.04.1998 had remanded the matter back to the Deputy Commissioner of Commercial Taxes with a direction to hold a fresh enquiry and pass appropriate orders in the light of certain observations made by him in the course of the order.

6. Aggrieved by the remand order so passed by the Joint Commissioner of Commercial Taxes, the Appellant had approached the High Court of Patna, Ranchi in Writ Petition No. 1887 of 1998. The Writ Court after considering the material on record has come to the conclusion that the Joint Commissioner of Commissioner Taxes (Admn.) has not committed any error whatsoever which would call for interference under Article 226 and 227 of the Constitution of India. Thereafter the Appellant had filed the review petition before the High Court which was also dismissed.

7. Against the orders passed by the Writ Court the Appellant had approached this Court by way of the special leave petition. This Court also dismissed the aforesaid special leave petition.

8. In the interregnum the Commercial Tax officer, Dhanbad had inspected the business premises of the Appellant industry and had furnished his report to the Deputy Commissioner of Commercial Taxes, Dhanbad.

9. After receipt of the aforesaid report and after considering the case pleaded by the Appellant, the Deputy Commissioner of Commercial Taxes has come to the conclusion that the Appellant did not manufacture any article from the raw materials and therefore, not entitled for exemption under the Notification dated 04.04.1994. The order so passed by the Deputy Commissioner of Commercial Taxes was confirmed by the Commissioner of Commercial Taxes in Revision filed by the Appellant.

10. Aggrieved by the aforesaid orders the Appellant had approached the Writ Court once over again in Writ Petition No. 4646 of 2002. The High Court has rejected the petition and has confirmed the orders passed by the Deputy Commissioner of Commercial Taxes and the Commissioner of Commercial Taxes and these orders are called in question before us.

11. Shri Ambhoj Kumar Sinha, Learned Counsel for the Appellant would contend that the High Court as well as the revisional authority were not justified in coming to the conclusion that the activity of the Appellant did not involve any manufacturing activity. The Learned Counsel would further submit that the definition of 'manufacture' in the Act is wide enough to include the activity of the Appellant as manufacturing activity. In aid of the aforesaid submission, Learned Counsel has taken us through the definition of 'Manufacture' that finds a place in dictionary clause of the Act. The Learned Counsel has also relied upon certain observations made by this Court in the case of Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others,

12. Per contra, Learned Counsel for the State of Jharkhand submits that this Court need not look into the definition of 'Manufacture' that finds place in the Act for the reason that the Appellant is bound by the conditions imposed in the exemption Notification issued by the State Government dated 04.04.1994. According to the Learned Counsel, if raw material is not directly used in the manufacture of goods then such an industry will not be entitled for grant of exemption from payment of tax under the Act for a period of 7 years.

13. Learned Counsel further argued that the Appellant purchased iron and steel scrap and produced agricultural and household articles. Mere production of the aforesaid commodities will not come within the definition of the 'Manufacture' since there is no new article which comes into existence.

14. Before we advert to other details of the case, reference to the aforesaid Notification is necessary and therefore it is extracted:

Annexure P-1 Notification

S.O. 95 dated 4th April, 1994, the Governor of Bihar in exercise of powers conferred by Clause (b) in Sub-section (3) of Section-7 of Part-1 of Bihar Finance Act, 1981 (Bihar Act No. 5 of 1981) grant exemption to following industrial units which are approved and registered by the Industry Department of Bihar Government or by the Competent Authority of Government of India and fall in the production between the period from 31st March, 1993 to 31st March, 1998 and the investment in their machinery and plant upto 1st April, 1993 does not exceed rupees 15 crores and manufacture goods for sale in the State of inter-state trade and in the course of commerce and who has not availed any facility of commerce and who has not availed any facility or benefit under any industrial promotion policy for seven years from 1st April, 1993 from sales tax for the purchase of raw material, directly, required for the manufacture of goods for sale under following terms and conditions:

i) this facility will be applicable to the following industrial units only:

XXXX

(46) Iron and Steel, as defined in Section 14 of the Central Sales Act, 1945.

ii) This exemption will be applicable to such raw material which is directly required for the use in the manufacture of good. Raw material required directly means such raw material which is directly converted into finished goods and this will not include materials used indirectly and all types of fuel including coke etc., used as fuel, oil equipments co-material etc.

15. The other clauses in the aforesaid Notification need not be noticed by us, since. the reference to those clauses may not be necessary for the purpose of disposal of this appeal.

16. In order to resolve the controversy between the parties, we need to notice the definition of 'Manufacture' in the Act since Clause 2 of the Notification specifically notes that an industrial unit would be entitled for exemption for such raw material which is directly used in the manufacture of goods and therefore it is pertinent to observe what constitutes a manufacturing activity under the Act for the manufacture of such goods as notified in the Government notification in question.

17. The definition of 'Manufacture' in the Act is very wide and the same is as under:

'Manufacture' with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, adapting any goods but does not include such manufacture or manufacturing process as may be prescribed.

18. After the remand order that was passed by the Joint Commissioner of Commercial Taxes (Admn.) the Commercial Tax Officer had inspected the business premises of the Appellant and had furnished his report to the Deputy Commissioner of Commercial Taxes. In our considered opinion reference to the inspection report to the Commercial Tax Officer requires to be noted and extracted. Such report clearly indicates the nature of the activity of the Appellant in its business premises. The same is as under:

Annexure-7 Inspection Report Dated

Dated 16.3.2000

A sudden inspection was carried out at the place of business. The businessmen/ the unit carries on business of iron and steel. The persons present there informed us that all kinds of iron and steel defective cutting and rejects is cut and processed in the unit and agricultural and household articles are manufactured.

The unit is registered as a small Scale Industrial Unit for the aforesaid work by

the industries department. The unit purchases iron scrap, coil, shape in-cutting, prime steel ingot, cable plate, etc. from Bokaro Steel Plant, and the same is unloaded with the help of the electricity run over head crane whose capacity is 35 MT. It has been informed that this work was done by hired crane before, but from 1998, the crane has been installed in the unit. The crane was found in working condition in which one motor of 10 HP and 3 motors of 5 HP are used.

As far as the work in the Unit is concerned, it was found that the raw material, after unloading from the crane, is kept on a machine which rolls the same and straightens the same. Thereafter, with the help of a shearing machine, which is powered by a 15 HP motor, the raw materials is cut as per requirement so that iron sheet of required size is obtained. After some time it becomes hard. This hard sheet is then put in a furnace so that it becomes soft and thereafter agricultural and household articles are prepared.

Under the second type of work carried out in the Unit, "scrap iron cutting" is cut in small pieces by gas cutting machines. The Unit uses industrial gases and Oxygen gases.

The third nature of work carried out in the Unit is finishing and sizing of iron scrap using electricity powered machines.

Therefore, using different procedures, the Unit processes iron and scrap and manufactures household and agricultural articles, household articles like Spade, hasuan, Khurpi, Kudal, Tawa, Chalini etc. in a manufactured condition were found in the premises.

When a request for the account book was made, it was informed that the account books were with the accountant and it was not possible to produce them at that time.

This inquiry report is being given after a detailed inspection of the Unit. The Unit has been informed to keep the account books in the Unit itself so that necessary inspection can be done at the time of inspection itself.

We were also informed that the Unit had been exempted from sales tax for the period 30.01.1997 to 29.1.2004 under Notification Nos. S.O. 95 dated 4.4.1994 under the Industrial Incentive Policy, which was cancelled in the year 1998 under the orders of Joint Commissioner, Commercial Tax, Dhanbad Division, Dhanbad and therefore, they are not able to use the exemption.

19. Though the said report was available before the Deputy Commissioner of Commercial Taxes when he passed fresh order pursuant to the remand order passed by the Joint Commissioner of Commissioner Taxes (Admn.), but still had come to the conclusion that though the Appellant purchased raw material such as steel scraps and produced agriculture and household articles no new commodity comes into existence. This view of the Deputy Commissioner of Commercial Taxes is not correct for the reason that the definition of 'Manufacture' that finds a place in the Act is wide enough to cover production, making, extracting, altering,

ornamenting, finishing or otherwise processing of the raw material. In the instant case as we have noticed that the raw material that is purchased by the Appellant is a steel scrap and what is produced with the steel scrap are agricultural implements and the household articles. Therefore, the activity of the Appellant would certainly fit into the definition of 'Manufacture' to qualify for the grant of exemption under the notification. At this stage we refer to certain observations made in this Court in the case of Ashirwad Ispat Udyog (supra). This Court has stated as under:

The Appellants treat iron and steel scrap of considerable bulk by cutting it down by mechanical processes into pieces that may be conveniently utilised in rolling mills and foundries. Such treatment making saleable goods would in our opinion would fall within the wide definition of "Manufacture" u/s 2(j) of the said Act.

20. Further, this Court in the case of Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, relying on the decision of this Court in M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, held that the definition of 'manufacture' in Uttar Pradesh Trade Tax Act, 1948 is very wide to include processing, treating or adapting any goods and therefore it held that even if the processing of coal to make coal briquettes, did not amount to a different commercial commodity, eventhough it did, it would still amount to "manufacture" as it is processing, treating or adapting coal to make coal briquettes which are altogether different in shape, size, moisture and characteristics. In view of the above, we are of the considered opinion that the revisional authority and the High Court was not justified in rejecting the request of the Appellant for grant of exemption under Notification dated 04.04.1994. In the result, the appeal is allowed and the impugned judgment and order is set aside. We direct the Department to furnish an appropriate exemption certificate to the Appellant to claim the benefit under Notification dated 04.04.1994 as early as possible at any rate within two months time from today.

Ordered accordingly.